



Report to the Chairwoman,
Subcommittee on Immigration and
Citizenship, Committee on the Judiciary,
House of Representatives

December 2019

IMMIGRATION ENFORCEMENT

Immigration-Related Prosecutions Increased from 2017 to 2018 in Response to U.S. Attorney General's Direction

Accessible Version

GAO Highlights

Highlights of [GAO-20-172](#), a report to the Chairwoman, Subcommittee on Immigration and Citizenship, Committee on the Judiciary, House of Representatives

View [GAO-20-172](#) for more information, or contact Gretta L. Goodwin at (202) 512-8777 or email at goodwin@gao.gov.

Why GAO Did This Study

In 2017 and 2018, the Attorney General directed federal prosecutors to prioritize prosecutions of immigration-related offenses, including improper entry into the United States, illegal reentry after a prior removal from the country, and alien smuggling, among other offenses. Most individuals prosecuted for such offenses are arrested by DHS's U.S. Border Patrol and referred to DOJ's USAOs for prosecution in federal court.

GAO was asked to review the actions DOJ, DHS, and the federal judiciary took in response to the 2017 and 2018 memoranda. GAO reviewed (1) how DOJ prioritized prosecutions of immigration-related offenses in response to the Attorney General's memoranda, (2) what DHS and DOJ data from fiscal years 2014 through 2018 indicate about such prosecutions, and (3) resources that DOJ, DHS, and the federal judiciary used to support increased immigration-related prosecutions. GAO visited three of the five southwest border USAO districts and interviewed DOJ, DHS, and federal judiciary officials by phone from the other two districts. GAO also analyzed U.S. Border Patrol data on its arrests and prosecution referrals from fiscal years 2014 through 2018; analyzed Executive Office for U.S. Attorneys data on its prosecutions from fiscal years 2014 through 2018; and reviewed relevant laws and DOJ, DHS, and federal judiciary policies, operational guidance, and budget data.

This is a public version of a sensitive report that GAO issued in August 2019. Information that DOJ, DHS, or the federal judiciary deemed sensitive has been removed.

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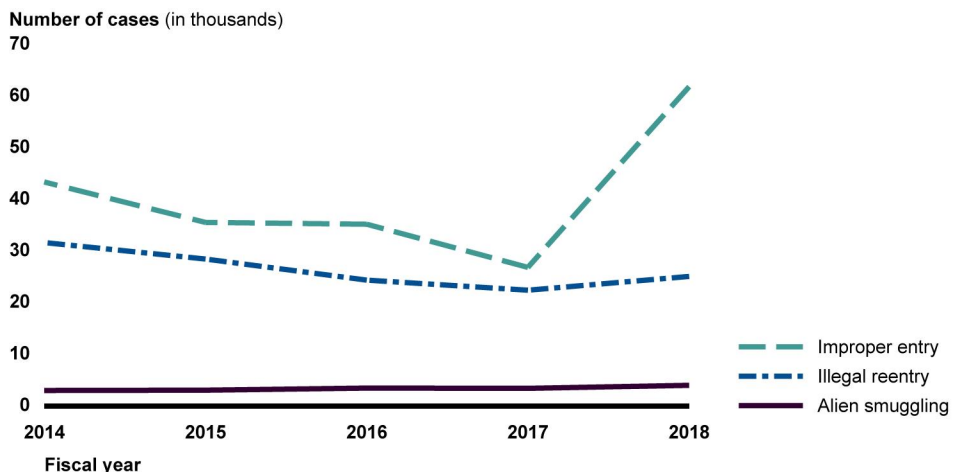
IMMIGRATION ENFORCEMENT

Immigration-Related Prosecutions Increased from 2017 to 2018 in Response to U.S. Attorney General's Direction

What GAO Found

Department of Justice (DOJ) U.S. Attorney's Offices (USAO) in all five districts along the southwest border—Arizona, California Southern, New Mexico, Texas Southern, and Texas Western—have adopted prosecution priorities aligned with the Attorney General's prioritization of criminal immigration enforcement. In particular, all five USAOs prioritized misdemeanor improper entry cases in response to the Attorney General's 2017 and 2018 memoranda. Some USAOs, such as Arizona, were able to quickly increase such prosecutions using existing practices. In other districts, such as California Southern, USAOs had to establish new practices in coordination with other stakeholders in the federal criminal prosecution process—including the Department of Homeland Security (DHS), other DOJ components such as the U.S. Marshals Service (USMS), and the federal judiciary—before they could begin accepting a significant number of improper entry cases.

Improper Entry, Illegal Reentry, and Alien Smuggling Cases Filed in U.S. Southwest Border Districts, by Lead Charge, Fiscal Years 2014-2018



Data table for highlights Improper Entry, Illegal Reentry, and Alien Smuggling Cases Filed in U.S. Southwest Border Districts, by Lead Charge, Fiscal Years 2014-2018

Year	Alien Smuggling	Illegal Reentry	Improper Entry
2014	3025	31670	43399
2015	3079	28480	35572
2016	3484	24395	35225
2017	3437	22443	26866
2018	4017	25112	61851

Note: The lead charge is typically the most serious charged offense at the time the case is filed.

The number of improper entry cases more than doubled from fiscal year 2017 (about 27,000) to fiscal year 2018 (about 62,000). In fiscal year 2018, about 84 percent of all improper entry cases filed were completed in districts with one-day improper entry court proceedings. In these proceedings, the initial hearing, presentation of evidence, plea, and sentencing took place in one day or less.

DOJ, DHS, and the federal judiciary realigned resources to support the prosecution priorities outlined in the 2017 and 2018 memoranda, including personnel and physical space. In addition, agencies temporarily surged personnel to the southwest border. For example, USMS reassigned personnel from other enforcement areas to judicial security duties to support increased immigration-related prosecutions.

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Abbreviations

AOUSC	Administrative Office of the U.S. Courts
AUSA	Assistant U.S. Attorney
Border Patrol	U.S. Border Patrol
CBP	U.S. Customs and Border Protection
CJA	Criminal Justice Act
DHS	Department of Homeland Security
DOD	Department of Defense
DOJ	Department of Justice
EOUSA	Executive Office for United States Attorneys
e3	Enforcement Integrated Database/e3
FDO	Federal Defender Organization
ICE	U.S. Immigration and Customs Enforcement
LIONS	Legal Information Office Network System
OFO	Office of Field Operations
SAUSA	Special Assistant U.S. Attorney
USAO	U.S. Attorney's Office
USMS	U.S. Marshals Service

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December 3, 2019

The Honorable Zoe Lofgren
Chairwoman
Subcommittee on Immigration and Citizenship
Committee on the Judiciary
House of Representatives

Dear Madam Chairwoman:

In April 2017, the Attorney General instructed federal prosecutors nationwide to prioritize certain immigration-related offenses for criminal prosecution, including improper entry into the United States (8 U.S.C. § 1325(a)) and illegal reentry into the United States after prior removal from the country (8 U.S.C. § 1326).¹ In April 2018, the Attorney General instructed federal prosecutors to implement a zero-tolerance policy along the southwest border and to accept all improper entry cases referred for prosecution to the extent practicable.² In announcing the policy, the Attorney General said that an escalated effort was needed to prosecute those who were attempting to illegally enter the country.³ Further, in July 2018, the Acting Chief of U.S. Customs and Border Protection's (CBP) U.S. Border Patrol (Border Patrol) testified that zero tolerance was

¹Department of Justice, Office of the Attorney General, *Renewed Commitment to Criminal Immigration Enforcement*, Memorandum for All Federal Prosecutors (Washington, D.C.: April 11, 2017). The memorandum states that it is a high priority of the Department of Justice to establish lawfulness in the immigration system and that consistent and vigorous enforcement of key laws will disrupt organizations and deter unlawful conduct. The April 2017 Attorney General memorandum directs prosecutors to consider prosecuting those improper entry cases in which the defendant has two or more prior misdemeanor improper entry convictions as felonies. As we will discuss later in this report, we define "immigration-related offenses" as the offenses listed in the Attorney General's April 2017 memorandum.

²Department of Justice, Office of the Attorney General, *Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a)*, Memorandum for Federal Prosecutors Along the Southwest Border (Washington, D.C.: April 6, 2018).

³Department of Justice, Office of Public Affairs, *Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry*, Press Release 18-417 (April 6, 2018).

necessary to enforce the law and take action against transnational criminal organizations and human smugglers.⁴

The Department of Justice (DOJ) reported that it charged a record-high number of individuals with improper entry and increased the number of individuals charged with illegal reentry in fiscal year 2018.⁵ A first conviction for an improper entry offense is a misdemeanor with a maximum term of imprisonment of 6 months. A subsequent improper entry conviction may be punishable by up to two years in prison.⁶ Illegal reentry is a felony offense in which an alien must generally have a record of a prior removal from the United States or a prior improper entry conviction.⁷ Most individuals prosecuted for immigration-related offenses are arrested by CBP and referred to DOJ's U.S. Attorney's Offices (USAO) for prosecution. DOJ also accepts prosecution referrals from other Department of Homeland Security (DHS) components, including CBP's Office of Field Operations (OFO) and U.S. Immigration and Customs Enforcement (ICE).⁸ Border Patrol generally apprehends

⁴Carla Provost, Acting Chief, U.S. Border Patrol, U.S. Customs and Border Protection, *Oversight of Immigration Enforcement and Family Reunification Efforts*, testimony before the Senate Judiciary Committee, 115th Cong., 2nd sess., July 31, 2018.

⁵Department of Justice, Office of Public Affairs, *Justice Department Smashes Records for Violent Crime, Gun Crime, Illegal Immigration Prosecutions, Increases Drug and White Collar Prosecutions*, Press Release 18-1351 (October 17, 2018). The prior high number of defendants charged with improper entry was set in 2013. DOJ reported that there were 38 percent more defendants charged with illegal reentry in fiscal year 2018 compared to 2017.

⁶An individual may be prosecuted for improper entry multiple times or may be prosecuted for illegal reentry after a prior improper entry conviction or removal. The April 2017 Attorney General memorandum directed that each USAO consider prosecuting as a felony any case in which the defendant had two or more prior misdemeanor improper entry convictions or one or more prior misdemeanor improper entry convictions with aggravating circumstances.

⁷The Immigration and Nationality Act defines an alien as a person who is not a citizen or national of the United States. See 8 U.S.C. § 1101(a)(3), (a)(22).

⁸According to DHS officials, Border Patrol, OFO, and ICE agents may arrest those individuals they apprehend or encounter and refer them to the USAO for criminal prosecution if there is evidence that such individuals committed a federal crime, such as improper entry or illegal reentry. Based on our interviews with DHS officials in several southwest border locations, most improper entry and illegal reentry cases originate with Border Patrol. Alien smuggling cases can originate with Border Patrol, OFO, or ICE, depending on DHS's location-specific prosecution referral procedures, according to officials. For instance, a Border Patrol sector might apprehend a group of people associated with an alien smuggling offense, and then transfer that group of individuals to ICE, and then ICE would make the prosecution referral.

individuals at U.S. borders between ports of entry, and OFO encounters individuals at ports of entry. ICE apprehends individuals within the United States at locations other than borders or ports of entry.

In light of the Attorney General's April 2017 prioritization of immigration-related prosecutions, you asked us to review data and information on such prosecutions and the effect of the prioritization on federal resources. Specifically, this report examines (1) how DOJ prioritized criminal prosecutions of immigration-related offenses in response to the Attorney General's 2017 and 2018 memoranda; (2) what DHS and DOJ data from fiscal years 2014 through 2018 indicate about criminal prosecutions for immigration-related offenses; and (3) resources that DOJ, DHS, and the federal judiciary used to support increased immigration-related prosecutions.

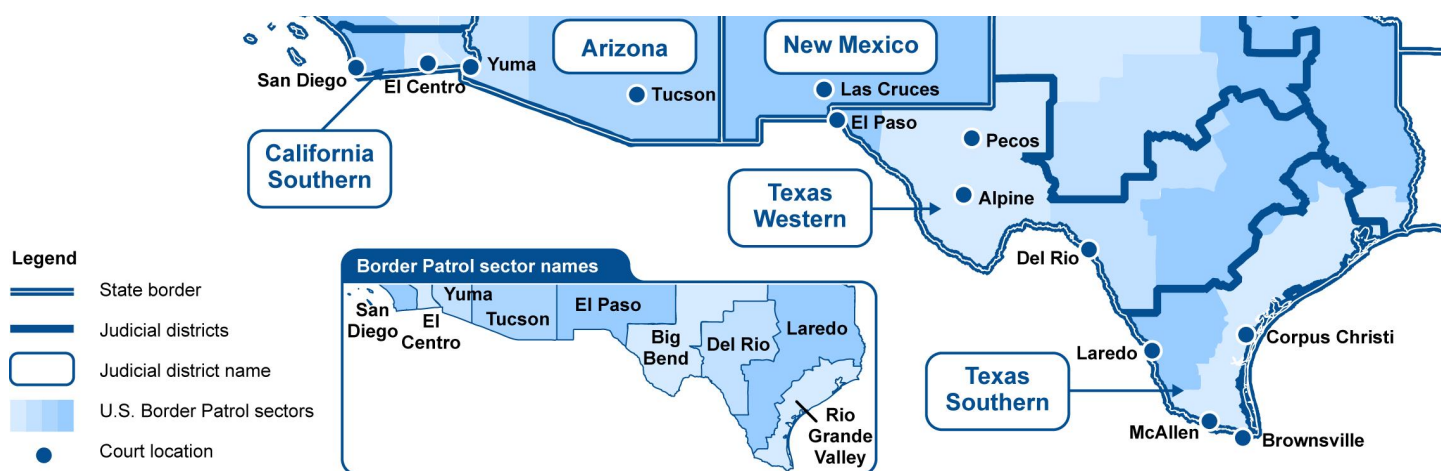
This report is a public version of the prior sensitive report that we provided to you in August 2019.⁹ DHS, DOJ, and the Administrative Office of U.S. Courts (AOUSC) deemed some of the information in the prior report as Law Enforcement Sensitive or For Official Use Only, which must be protected from public disclosure. Therefore, this report omits sensitive information about specific law enforcement, prosecutorial, and judicial practices along the southwest border, including certain courtroom security and agency staffing information. Although the information provided in this report is more limited, the report addresses the same objectives as the sensitive report and uses the same methodology.

We generally focused our review on the five USAO districts along the southwest border—Arizona, California Southern, New Mexico, Texas Southern, and Texas Western—because the Attorney General's 2017 and 2018 memoranda specifically directed officials in these districts to prioritize improper entry prosecutions. Further, about 93 percent of all immigration-related prosecutions took place in these districts from fiscal years 2014 through 2018.¹⁰ Figure 1 depicts southwest border judicial districts (including USAO districts and federal court districts, which are the same), the locations of courts, and Border Patrol sectors, which are generally not contiguous with USAO districts.

⁹GAO, *Immigration Enforcement: Immigration-Related Prosecutions Increased from 2017 to 2018 in Response to U.S. Attorney General's Direction*, GAO-19-548SU (Washington, D.C.: Aug. 19, 2019).

¹⁰Information about immigration-related prosecutions in non-southwest border districts is provided in an appendix.

Figure 1: Map of U.S. Southwest Border U.S. Attorney's Offices and Judicial Districts, Federal Courts, and U.S. Border Patrol Sectors



Source: GAO Presentation of U.S. Border Patrol, Administrative Office of U.S. Courts, and Executive Office of U.S. Attorneys information; MapInfo (map). | GAO-20-172

To determine how DOJ prioritized criminal prosecutions of immigration-related offenses in response to the Attorney General's 2017 and 2018 memoranda, we reviewed relevant agency guidance, policy, and memoranda describing how DOJ, DHS, and the federal judiciary carry out immigration-related prosecutions along the southwest border. We visited three of the five southwest border districts and interviewed officials by telephone from DOJ, DHS, and the federal judiciary from the other two districts. Specifically, we conducted in-person site visits to Arizona in July 2018, California Southern in October 2018, and Texas Southern in October 2018.

To select the locations for our site visits, we considered DOJ's history of prosecuting improper entry offenses in different locations, including whether districts implemented changes to their practices for prosecuting improper entry offenses in response to the Attorney General's memoranda. In addition, we considered the number of Border Patrol apprehensions in each USAO district and changes in apprehension volume from fiscal years 2014 through 2018. We also considered factors such as whether DOJ, DHS, and federal court facilities are in close proximity, among other things. In the three districts we visited, we met with DOJ and federal court officials, including magistrate and district judges, to understand and observe their roles in the criminal prosecution process. We met with USAO, U.S. Marshals Service (USMS), Federal Defender Organizations (FDO), and federal court officials and observed

federal criminal court proceedings in Tucson, Arizona; San Diego, California; McAllen, Texas; and Brownsville, Texas.¹¹ We observed the criminal prosecution process from arrest to conviction and sentencing, including observations of proceedings before district and magistrate judges and USMS intake and holding facilities in federal courthouses. In addition, we observed Border Patrol and OFO processing apprehended individuals and referring them for prosecution. We met with Border Patrol officials in Tucson, Arizona; McAllen, Texas; and San Diego, California. We met with OFO officials at ports of entry in Nogales, Arizona; San Ysidro, California; Hidalgo, Texas; and Brownsville, Texas. We also interviewed USAO, USMS, federal court, Border Patrol, and OFO officials who are involved in immigration prosecutions in Las Cruces, New Mexico in November 2018 (New Mexico district) and Del Rio, Texas in November 2018 (Texas Western district). Although the information we obtained from these site visits and interviews cannot be generalized to all locations along the southwest border, these interviews provided important insights and perspectives about immigration-related prosecutions and any process, volume, or resource changes in immigration-related prosecutions following the April 2017 memorandum.

In addition to our site visits, we interviewed officials from DOJ (including officials from the Offices of the Attorney General and the Deputy Attorney General) and DHS headquarters, as well as officials from AOUSC—the federal judiciary agency that provides legislative, administrative, management, and program support to federal courts, among other functions—about their roles and responsibilities related to immigration-related prosecutions and any changes in their roles or practices following the April 2017 and April 2018 memoranda.

To determine what DOJ and DHS data from fiscal years 2014 through 2018 indicate about prosecutions of immigration-related offenses, we analyzed prosecution data from Executive Office of U.S. Attorney's (EOUSA) CaseView and apprehension data from Border Patrol's

¹¹The Defender Services program includes Federal Public Defender Organizations, whose staff are judiciary branch employees, and grant-funded Community Defender Organizations. We refer to these defender organizations collectively as FDOs.

Enforcement Integrated Database/e3 (e3).¹² Specifically, we analyzed e3 data on Border Patrol's prosecution referrals and CaseView data on USAO cases filed and dispositions from fiscal years 2014 through 2018.¹³ We selected these years because they were the five most recent fiscal years for which complete data were available at the time of our review. We assessed the reliability of these data by testing for missing data and obvious errors, reviewing related documentation such as data dictionaries and guidance for entering data, and interviewing knowledgeable agency officials. We determined that the data used in our analyses were sufficiently reliable for reporting on the numbers and characteristics of Border Patrol referrals and DOJ prosecutions of immigration-related offenses over this time period.

In reviewing the EOUSA and Border Patrol data, we determined that the majority of Border Patrol prosecution referrals (97 percent) and EOUSA prosecutions (more than 90 percent) of immigration-related offenses took place in the five southwest border districts from fiscal years 2014 through 2018. We excluded the small percentage of referrals and prosecutions that did not take place along the southwest border from our primary analysis.¹⁴ Additionally, we determined that improper entry, illegal reentry, and alien smuggling charges comprise the majority (approximately 99

¹²ICE and OFO also refer some immigration-related cases for prosecution on the southwest border, although the number of these cases is small relative to those referred by Border Patrol. OFO began tracking data on prosecution referrals in fiscal year 2018 and reported 1,606 referrals for criminal prosecution after an OFO encounter in fiscal year 2018. According to ICE officials ICE began tracking prosecution referrals in fiscal year 2016.

¹³According to EOUSA officials, CaseView replaced EOUSA's Legal Information Office Network System (LIONS) data system in 2017. During the transition from LIONS to CaseView, USAO staff could enter data into either system for a number of years. EOUSA officials told us that case data entered into CaseView was directly comparable to data entered into the legacy LIONS system for the years we analyzed.

¹⁴We excluded Border Patrol apprehensions that did not take place in the following Border Patrol sectors: Rio Grande Valley, Laredo, Del Rio, Big Bend, El Paso, Tucson, Yuma, El Centro, and San Diego. Apprehensions along the U.S. northern border are excluded from our analysis. We excluded EOUSA prosecutions that did not take place in the following districts: Arizona, California Southern, New Mexico, Texas Western, and Texas Southern. Information about EOUSA's immigration-related prosecutions in non-southwest border districts is provided in an appendix.

percent) of immigration-related prosecutions.¹⁵ We excluded the other charges that the Attorney General listed in the April 2017 memorandum from our primary analysis.¹⁶ In addition, we limited our analysis of e3 data to those apprehended adults over the age of 18 who Border Patrol did not process as members of family units.¹⁷ According to Border Patrol guidance and agency officials, e3 has system checks in place that do not allow members of family units to be referred for criminal prosecution unless the family unit is first separated in e3.¹⁸ Prior to April 2018, Border Patrol officials said that individuals who were to be referred for prosecution were generally processed by Border Patrol as single adults whether or not they were apprehended with their minor children. In April 2018, an update to e3 allowed Border Patrol agents to indicate in e3 that one or more members of a family unit were separated and the reason for that separation, such as for prosecution.¹⁹

¹⁵Based on our analysis of EOUSA data, we categorized immigration-related offenses at the statute level. For instance, rather than reporting specifically on 8 U.S.C. § 1325(a), we are reporting on all charges under 8 U.S.C. § 1325, generally, which we refer to throughout the report as improper entry. According to EOUSA officials, USAOs along the southwest border record improper entry to varying levels of specificity. For instance, in some locations, USAOs record improper entry at the statute level. According to these officials, most improper entry charges that USAOs along the southwest border record at the statute level indicate a specific charge of 8 U.S.C. §1325(a).

¹⁶Because these charges comprised approximately one percent of immigration-related prosecutions during the time period of our review, we excluded 18 U.S.C. § 1028A (aggravated identity theft), 18 U.S.C. § 1546 (visa fraud), and 18 U.S.C. § 111 (assault against an officer).

¹⁷Adults are defined as any individual age 18 or older on the date of their Border Patrol apprehension. In general, according to USAO and Border Patrol officials, USAOs will not accept the cases of juveniles referred for criminal prosecution unless there are aggravating circumstances.

¹⁸Adult members of family units must be separated from their family unit before a criminal prosecution referral can take place, according to e3 guidance and Border Patrol officials. According to e3 guidance and Border Patrol officials, Border Patrol's e3 system began to track such family separations in April 2018. We have excluded these individuals from our analysis of single adults referred for prosecution. Border Patrol officials said that e3 did not track members of family units that were separated due to a prosecution referral prior to April 2018. However, Border Patrol officials said that individuals who are members of family units and were referred for prosecution may have been added to the family unit after their criminal prosecution. We have excluded these individuals from our analysis of single adults referred for prosecution.

¹⁹We previously reported on the April 2018 update to e3 in October 2018. See GAO, *Unaccompanied Children: Agency Efforts to Reunify Children Separated from Parents at the Border*, [GAO-19-163](#) (Washington, D.C.: October 9, 2018), 16-18.

To determine the resources that DOJ, DHS, and the federal judiciary used to implement increased immigration-related prosecutions, we interviewed budget and program officials and reviewed DHS, DOJ, and federal judiciary documentation focused on funds that agencies expended to increase such prosecutions in fiscal years 2017 and 2018, as well as any existing resources that agencies realigned to implement or support increased immigration prosecutions. We also reviewed Congressional Budget Justifications for fiscal year 2020 to identify funds that agencies requested from Congress to support increased immigration-related prosecutions. In instances where there was no explicit distinction between funds for immigration-related prosecutions and funds for other prosecutions, we identified the general account within which immigration-related prosecution costs would be included, and noted that those expenditures include costs for other prosecutions. In addition, where agencies identified that they used personnel resources to implement immigration-related prosecutions, we collected related information, such as expenditures for temporary staff details from other parts of the United States to the southwest border, as available. For more details on our scope and methodology, see appendix I.

The performance audit upon which this report is based was conducted from May 2018 to August 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We subsequently worked with DHS, DOJ, and AOUSC from September 2019 to December 2019 to prepare this nonsensitive version of the original sensitive report for public release. This public version was also prepared in accordance with these standards.

Background

Federal Prosecution Roles and Immigration-Related Offenses

DHS, DOJ, and the federal judiciary have different roles in the federal criminal process for immigration-related prosecutions, as shown in table 1.

Table 1: Selected Department of Homeland Security (DHS), Department of Justice (DOJ), and Federal Judiciary Components' Roles in Criminal Prosecutions of Immigration-related Offenses

	Agency	Role
DHS: makes arrests and refers cases for criminal prosecution	U.S. Customs and Border Protection's (CBP) U.S. Border Patrol (Border Patrol)	Border Patrol apprehends and arrests individuals between U.S. ports of entry, and may refer individuals to USAOs for criminal prosecution.
	CBP's Office of Field Operations (OFO)	OFO inspects individuals seeking admission at U.S. ports of entry, and may refer individuals to USAOs for criminal prosecution.
	U.S. Immigration and Customs Enforcement (ICE)	ICE apprehends and arrests individuals throughout the United States and may refer those individuals for criminal prosecution. ICE also detains and removes aliens who are ordered removed through administrative removal proceedings.
DOJ: prosecutes cases, detains prisoners, and provides judicial security	U.S. Attorney's Office (USAO) ^a	USAOs prosecute and support investigations of federal criminal activities, including immigration-related crimes. Each U.S. Attorney establishes prosecution priorities for his or her district and determines which referred cases to accept. Each U.S. Attorney exercises wide discretion to establish district priorities, consistent with Attorney General or DOJ priorities, and allocate resources to those priorities. Assistant U.S. Attorneys represent the government in court.
	U.S. Marshals Service (USMS)	USMS provides courtroom security for federal criminal court proceedings. USMS also detains those individuals who have been remanded to their custody by a federal judge.
Federal judiciary: interprets and applies federal law and provides public defense services	District judges	District judges oversee matters in federal district courts. They are appointed by the president and confirmed by the Senate and serve a life term. District judges generally oversee felony criminal prosecutions and trials within the federal court system.
	Magistrate judges	Magistrate judges are appointed to assist district judges in the performance of their duties. In southwest border courts, magistrate judges generally oversee and dispose of all misdemeanor immigration cases. They also conduct initial hearings, set bail, conduct arraignments, and, in some districts, conduct change of plea hearings and hear certain motions in felony cases.
	Federal Defender Organizations (FDO) and Criminal Justice Act (CJA) panel attorneys ^b	Public defenders are court-appointed attorneys who represent defendants in court. FDOs and CJA panel attorneys represent the majority of individuals who are prosecuted in U.S. federal courts. CJA panel attorneys are private attorneys that provide public defense in cases where a conflict of interest or some other factor precludes federal defender representation.

Source: GAO. | GAO-20-172

^aThe 93 U.S. Attorneys are appointed to serve in the 94 federal judicial districts throughout the country. One U.S. Attorney is appointed to serve in both the Districts of Guam and the Northern Mariana Islands.

^bSee 18 U.S.C. § 3006A.

For this report, we define immigration-related offenses as the offenses listed in the Attorney General's April 2017 memorandum (see table 2).

Table 2: Immigration-Related Offenses, Per the Attorney General's April 2017 Memorandum Prioritizing Criminal Immigration Enforcement

Term	Statute	High-level description of offense(s)	Misdemeanor or felony offense ^a
Alien smuggling	8 U.S.C. § 1324	bringing in and harboring certain aliens, including the unlawful transportation of certain aliens	Felony
Improper entry by alien	8 U.S.C. § 1325	(a) illegal/improper entry into the United States (c) marriage fraud ^b (d) immigration-related entrepreneurship fraud ^b	First offense for 8 U.S.C. § 1325(a) is a misdemeanor
Illegal reentry	8 U.S.C. § 1326	(a) illegal reentry of removed alien (b) illegal reentry of certain removed aliens with specific criminal history, such as a prior conviction for an aggravated felony ^c	Felony
Identity theft ^d	18 U.S.C. § 1028A	aggravated identity theft	Felony
Visa/identity fraud	18 U.S.C. § 1546	(a) fraud and misuse of visas, permits, or other identity documents (b) immigration-related use of false identity documents	Felony
Assault on a federal officer ^d	18 U.S.C. § 111	assaulting, resisting, or impeding certain officers or employees where there is physical contact with an officer, when a deadly or dangerous weapon is used, or serious bodily injury results	Felony

Source: GAO. | GAO-20-172

Note: Department of Justice, Office of the Attorney General, *Renewed Commitment to Criminal Immigration Enforcement*, Memorandum for All Federal Prosecutors (Washington, D.C.: April 11, 2017).

^aA misdemeanor is an offense generally punishable by a maximum term of imprisonment of one year or less. A felony is an offense generally punishable by a term of imprisonment of more than one year.

^bSection 1325(c) establishes criminal penalties for knowingly entering into a marriage for the purpose of evading any provision of the immigration laws. Subsection (d) establishes criminal penalties for knowingly establishing a commercial enterprise for the purpose of evading any provision of the immigration laws.

^cThe term "aggravated felony" is defined in the Immigration and Nationality Act to include, among other offenses, murder, rape, or sexual abuse of a minor, illicit trafficking of a controlled substance, and a crime of violence for which the term of imprisonment is at least one year. See 8 U.S.C. § 1101(a)(43).

^dFor this report, identity theft and assault on a federal officer are considered immigration-related offenses if (1) the individual charged with such an offense is also charged with improper entry, illegal reentry, or alien smuggling or (2) federal prosecutors have categorized the case as immigration-related in their charging documents.

Immigration-Related Prosecutions on the Southwest Border

Criminal prosecution process. DHS and DOJ officials told us that DHS's practices for referring cases for prosecution, and DOJ's practices for prioritizing immigration-related prosecutions, vary by location along the southwest border. In general, individuals are prosecuted in the judicial district that corresponds with the location of their alleged criminal offenses. Each USAO prosecutes cases in one or more courts. USAOs coordinate with DHS and DOJ components, as well as the federal courts, to determine the types and number of cases, including immigration-related cases, each office will prosecute, according to DOJ officials. In particular, according to DOJ's *Principles of Federal Prosecution*, the prosecutor has wide latitude in determining when, whom, how, and whether to prosecute for apparent violations of federal criminal law, and this broad discretion has been recognized on numerous occasions by the courts.²⁰ Border Patrol officials on the southwest border told us that they receive training from the USAOs about the criminal prosecution process and that they use the prosecution priorities established by the USAO to determine whether to refer a case for criminal prosecution.²¹ In general, immigration-related cases referred to the USAO by Border Patrol follow the process described in figure 2.

One-day prosecutions. In three federal judicial districts on the southwest border—Arizona, Texas Southern, and Texas Western—DOJ prosecutes defendants for improper entry in criminal proceedings that generally last one day or less, or one-day prosecutions (see figure 2).²² The volume of defendants prosecuted for improper entry per day in these districts varies

²⁰Department of Justice. *Justice Manual*, Title 9: Criminal, Principles of Federal Prosecution – Purpose, 9-27.110 (updated February 2018).

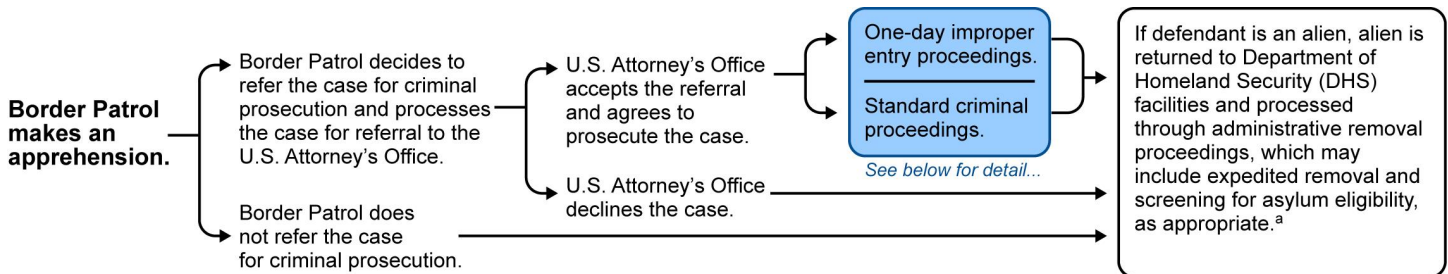
²¹According to Border Patrol and USAO officials, Border Patrol generally shares information about the circumstances and evidence available for each case that is referred for prosecution, and the USAO determines whether to accept and prosecute the case.

²²One-day prosecutions took place in these districts as of the date of our site visits or interviews with USAO officials in those locations. Specifically, we visited Arizona in July 2018, Texas Southern in October 2018, and spoke with officials in Texas Western in November 2018.

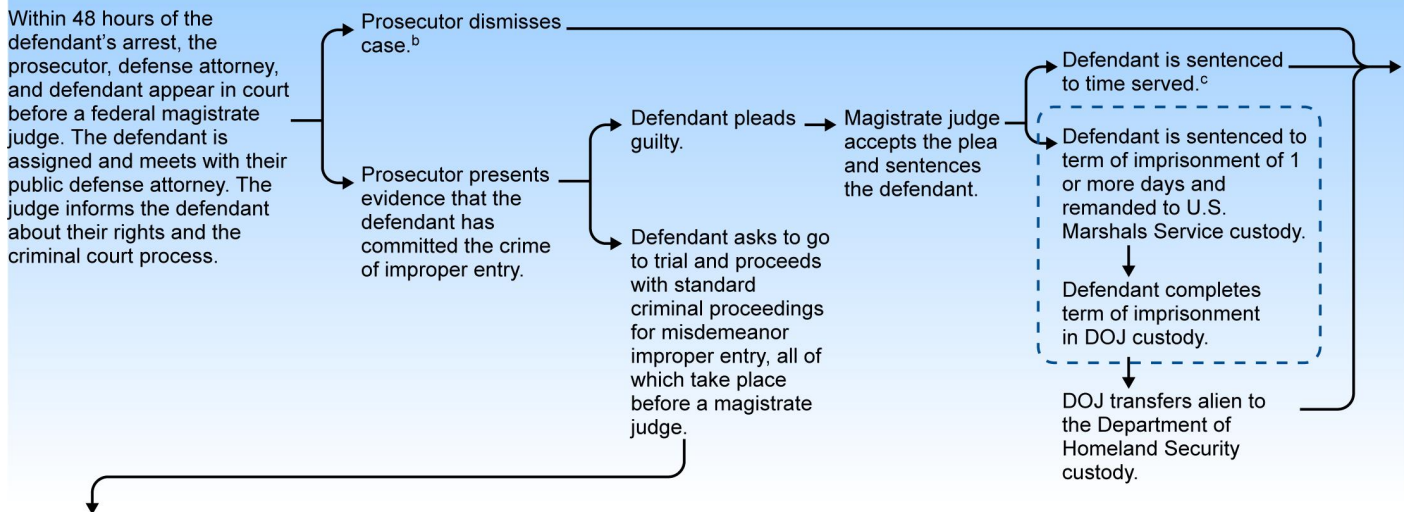
depending on the volume of Border Patrol apprehensions and capacity limitations, among other things.²³

²³Different locations have different names for these one-day prosecutions, and their names have changed over time. They include: Operation Streamline, Criminal Consequence Initiative, and the 1325 Duty Court.

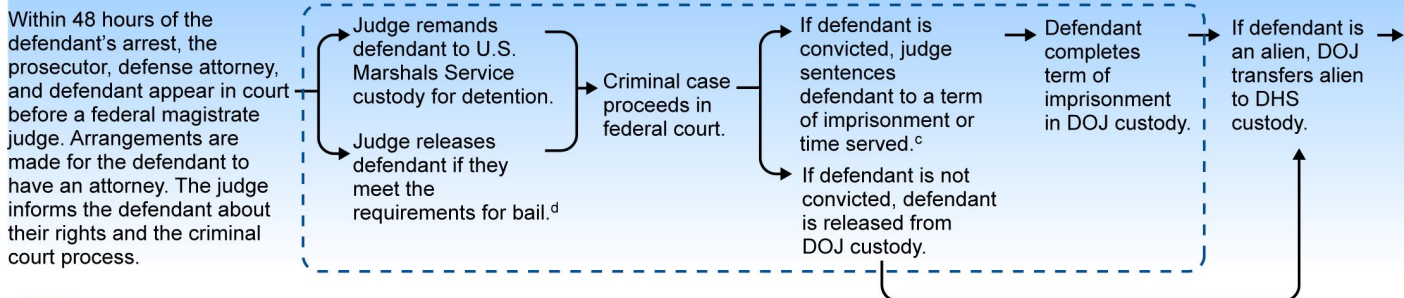
Figure 2: Federal Criminal Prosecution Process for an Immigration-Related Case Referred for Prosecution by U.S. Border Patrol (Border Patrol)



One-day improper entry proceedings



Standard criminal proceedings



--- Department of Justice (DOJ) custody

Source: GAO observations and interviews from U.S. Attorney's Offices, federal courts, and U.S. Border Patrol. | GAO-20-172

Note: Federal immigration-related offenses generally include alien smuggling (8 U.S.C. § 1324), improper entry into the United States (8 U.S.C. § 1325) and illegal reentry after removal (8 U.S.C. § 1326). The Immigration and Nationality Act defines an alien as a person who is not a citizen or national of the United States. See 8 U.S.C. § 1101(a)(3), (a)(22). In some locations, defendants

charged with illegal reentry who agree to plead guilty to the lesser charge of improper entry may go through one-day improper entry proceedings.

^aWith some exceptions, including unaccompanied alien children, individuals apprehended by Border Patrol may be placed into administrative removal proceedings before an immigration judge or, if the individual is an arriving alien or encountered within 14 days and 100 miles of entry and is inadmissible based on fraud or misrepresentation, may be placed into expedited removal. Individuals placed into expedited removal are to be ordered removed from the United States without further hearing unless the individual indicates either an intention to apply for asylum or a fear of persecution, in which case they are to be referred to DHS's U.S. Citizenship and Immigration Services for credible fear of persecution screening. See 8 U.S.C. § 1225(b). DHS published a notice designating additional non-citizens as eligible for expedited removal on July 23, 2019, including eliminating the 100 air miles requirement and expanding the 14-day timeframe to two years. See 84 Fed. Reg. 35,409 (July 23, 2019). This rulemaking was enjoined by the district court for the District of Columbia on September 27, 2019 and, as of October 2019, litigation was ongoing. *Make the Road New York v. McAleenan*, No. 19-2369 (D. D.C. Sept. 27, 2019) (order granting preliminary injunction).

^bThe prosecutor, with permission from the court, may dismiss a case for a variety of reasons, including but not limited to: if over the course of court proceedings, the prosecutor learns that the defendant is a juvenile; if there is evidence that the defendant is incompetent; if there is insufficient evidence to prove that an offense was committed; or in certain districts, if the defendant speaks a language other than Spanish or English, the prosecutor may dismiss a case because the court might not have immediate access to an interpreter.

^cA time served sentence is when a defendant is sentenced to the same term of imprisonment that the defendant is credited with serving while in custody awaiting trial. The sentence results in the defendant's release from custody.

^dBefore the judge makes a decision on whether to grant bail, the judge must hold a hearing to determine whether bail or other conditions of release will reasonably assure that the defendant will appear in court. The judge will consider factors such as how long the defendant has lived in the area, if they have family nearby, their prior criminal record, if they have threatened any witnesses in the case, and the defendant's potential danger to the community, among other factors.

Timeline of Attorney General Memoranda and Related Guidance

Since 2017, there have been several federal directives related to DOJ's prioritization of immigration-related prosecutions. They are summarized in table 3.

Table 3: Timeline of 2017 and 2018 Federal Directives on Immigration-Related Prosecutions

Date	Issued by	Description of federal directive
January 25, 2017	President	Directed the Attorney General to establish prosecution guidelines and allocate appropriate resources to ensure that federal prosecutors accord a high priority to prosecutions of offenses with a nexus to the southwest border. ^a
April 11, 2017	Attorney General	Directed federal prosecutors to prioritize immigration-related offenses, including alien smuggling, improper entry, illegal reentry, aggravated identity theft, visa fraud, and assault on a federal officer. It also directed every U.S. Attorney's Office (USAO) to designate a Border Security Coordinator who would be responsible for overseeing this prioritization and directed USAOs along the southwest border to develop prosecution guidelines for prosecuting improper entry. ^b

Date	Issued by	Description of federal directive
April 6, 2018	Attorney General	Directed USAOs along the southwest border to immediately adopt a zero-tolerance policy for all improper entry offenses referred for prosecution, to the extent practicable and in consultation with the Department of Homeland Security (DHS), and to identify and request additional resources required to adopt this policy, if needed.
May 4, 2018	Secretary of Homeland Security	Approved referring all adults apprehended at the border to DOJ for criminal prosecution, including those adults apprehended with their minor children, to the extent practicable.
June 20, 2018	President	Directed DHS to maintain custody of alien families during any criminal improper entry or immigration proceedings involving their members, to the extent possible. ^c
June 27, 2018	U.S. Customs and Border Protection (CBP) Commissioner	Stated that adults who enter the United States illegally as part of a family unit should not be referred for prosecution for misdemeanor improper entry. Further, this guidance stated that CBP may refer adult members of family units for prosecution for felonies. ^d

Source: GAO. | GAO-20-172

^aExec. Order No. 13767, § 13, 82 Fed. Reg. 8793, 8796-8797 (Jan. 30, 2017) (issued Jan. 25); Exec. Order No. 13768, § 11, 82 Fed. Reg. 8799, 8801 (Jan. 30, 2017) (issued Jan. 25).

^bIn addition, on May 10, 2017, the Attorney General directed federal prosecutors to charge and pursue the most serious, readily provable offense. Department of Justice, Office of the Attorney General, Department Charging and Sentencing Policy, Memorandum for All Federal Prosecutors (Washington, D.C.: May 10, 2017). This May 2017 memorandum rescinded a previous memorandum, also known as the “Smart on Crime” initiative, dated August 12, 2013. See: Department of Justice, Office of the Attorney General, Federal Prosecution Priorities, Memorandum to Heads of Department of Justice Components and United States Attorneys (Washington, D.C.: August 12, 2013).

^cExec. Order No. 13841, 83 Fed. Reg. 29,435 (June 25, 2018) (issued June 20). The Executive Order defines “alien family” as an alien parent or legal guardian who entered the country with their minor children at or between designated ports of entry and who was detained. CBP officials stated that a parent may still be separated from his or her child in certain circumstances, such as if the parent has a criminal history or communicable disease, or if the parent is unfit or presents a danger to the child.

^dOn June 26, 2018, a federal court order prohibited the government from detaining class members—that is, certain adult parents who entered the United States after a certain date with their minor children—in DHS custody apart from their minor children and ordered the government to reunite class members with their children, absent a determination that the parent is unfit or presents a danger to the child, or the parent affirmatively, knowingly, and voluntarily declines to be reunified with the child. *Ms. L. v. U.S. Immigration & Customs Enforcement (Ms. L. v. ICE)*, No. 18-0428 (S.D. Cal. June 26, 2018) (order granting preliminary injunction). According to the order, “fitness” is an important factor in determining whether to separate parent from child and, in this context, could include “a class member’s mental health, or potential criminal involvement in matters other than ‘improper entry’ under 8 U.S.C. § 1325(a), among other matters.”

DOJ Prioritized Immigration-Related Prosecutions in 2017 and 2018, Particularly by Increasing One-Day Improper Entry Prosecutions

Beginning in April 2017, DOJ, in Coordination with DHS and Other Stakeholders, Prioritized Immigration-Related Cases

Prosecutors in all five southwest border USAOs told us that, in response to the Attorney General's 2017 directive and in coordination with DHS and other stakeholders, they took steps to prioritize immigration-related prosecutions in their respective jurisdictions. According to officials from the Office of the Attorney General, each USAO exercised its discretion in implementing the priorities identified in the memorandum. For example, some USAOs changed the threshold at which they would accept a prosecution referral for alien smuggling or illegal reentry. Officials in one USAO told us that, before the April 2017 memorandum, their office generally declined to prosecute alien smuggling cases involving fewer than six smuggled aliens. However, in response to the April 2017 memorandum, the office lowered its threshold to two smuggled aliens. Officials in another USAO said that in light of the April 2017 memorandum, they began accepting all referred illegal reentry cases that met the evidentiary standard. Previously, this office did not accept more than 150 illegal reentry defendants without a prior felony conviction per month.²⁴

In particular, in response to the memoranda, all five USAOs along the southwest border prioritized improper entry referrals for prosecution.²⁵ Some districts that were already prosecuting some improper entry cases, such as Arizona, were able to quickly increase such prosecutions by

²⁴According to DOJ, an illegal reentry after removal case requires evidence that the defendant illegally entered the United States after a prior removal from the country.

²⁵Officials in Texas Western told us they adopted the Attorney General's prioritization, but that the prioritization did not change their prosecution practices because they prosecuted all amenable adults before and after the memoranda.

scaling their existing systems, according to USAO officials.²⁶ Specifically, USAO officials in Arizona stated that their office began accepting referrals for first time improper entrants without aggravating circumstances in May 2017, in response to the April 2017 memorandum.²⁷

In comparison, other USAOs created new processes to prosecute more improper entry cases because they were not previously accepting a significant number of such referrals. For example, prior to the Attorney General's April 2017 memorandum, the USAO in the California Southern district did not prioritize the prosecution of improper entry cases. USAO officials in San Diego stated that in the spring of 2017, the USAO formed an immigration enforcement working group comprised of certain federal law enforcement entities in San Diego, including USMS, Border Patrol, and CBP OFO, to discuss potential actions the district might take to prioritize immigration enforcement. In May 2018, the Chief Judge in California Southern convened a criminal case management committee comprised of district and magistrate judges, court officials, USAO officials, USMS officials, and federal defenders, among others, to "identify and resolve problems" related to the increased prosecution of improper entry cases. These working groups collaborated to make decisions on issues such as the volume of improper entry cases the court could hear each day, how defendants in improper entry cases would meet with their attorneys, and how many defendants a public defender would represent in court each day. In July 2018, the San Diego court initiated a daily docket for misdemeanor improper entry cases.

²⁶According to court and USAO officials in Arizona, from 2008 to April 2017, there was a daily misdemeanor court session in Tucson through which the USAO prosecuted improper entry cases. These daily court sessions are typically referred to as dockets. However, prior to April 2017 and according to USAO and Border Patrol officials in Tucson, the USAO would generally not prosecute individuals for improper entry unless they also had a prior criminal conviction or removal from the United States. Although these defendants were often charged with illegal reentry by the USAO, they generally agreed to plead guilty to the lesser improper entry charge and their cases were heard during the misdemeanor improper entry docket.

²⁷According to USAO officials, aggravating circumstances may include a criminal history or other offense, such as a drug offense, committed at the same time as the improper entry. Border Patrol and USAO officials in Arizona told us that between 2008, when the daily improper entry docket began, and May 2017, the referral practices for the improper entry docket varied. At times, for example, all individuals apprehended in certain locations within the Tucson sector, including first-time entrants, would be referred for improper entry prosecution because these locations were targeted for enforcement due to dangers to the entering aliens or to the agents. Additionally, there were prosecution referrals for improper entry cases with aggravating circumstances.

Regarding DOJ's coordination with DHS, in four of the five southwest border districts, USAO officials told us that they informed local DHS partners, including local Border Patrol and OFO leadership, that their prosecution guidelines had changed in light of the 2017 memorandum and that they would accept more immigration-related cases for prosecution.²⁸ As a result, Border Patrol and OFO referred more immigration-related cases to DOJ. Further, in response to the April 2018 zero-tolerance memorandum, Border Patrol issued guidance to all southwest border sectors instructing each sector to develop phased plans to refer all amenable apprehended adults to the USAO for improper entry prosecution, based on capacities of the USAO and the federal courts, and the sectors developed and implemented these plans.²⁹ In general, these plans prioritized referrals of those individuals with a criminal history first, followed by those with no criminal history. For example, the plan for the Rio Grande Valley Border Patrol Sector stated that, incrementally, the Sector would increase prosecution referrals until attaining 100 percent prosecution on a timeline consistent with DOJ partners' capacity.

Regarding DOJ's coordination with other stakeholders in the federal criminal process, including the federal courts, USMS, and public defenders, USAO officials told us that they coordinated at the local level to be able to increase immigration-related prosecutions, to the extent practicable. In particular, the federal judiciary held a border court conference in June 2018 and established a task force—including judges, public defenders, and DHS and DOJ representatives—to discuss issues related to changing prosecution priorities in southwest border districts. The task force met three times between July 2018 and April 2019.

²⁸According to USAO officials in Texas Western, prosecution guidelines in their district did not change in response to the April 2017 memorandum.

²⁹At the time of this directive, Border Patrol defined all amenable adults to include all adults who illegally entered the United States between ports of entry, including those adults apprehended with their minor children. After the president's June 2018 Executive Order directing DHS to maintain custody of alien families during criminal improper entry proceedings, CBP issued guidance stating that adults who enter the United States illegally as part of a family unit should not be referred for prosecution for misdemeanor improper entry. In July 2018, the Acting Chief of Border Patrol testified that CBP's implementation of the zero-tolerance initiative after June 20, 2018 would focus on prosecution of single aliens who cross the border illegally. *Oversight of Immigration Enforcement and Family Reunification Efforts Before the Sen. Comm. On the Judiciary*, 115th Cong., 2nd sess. (2018) (statement of Carla Provost, Acting Chief, U.S. Border Patrol, U.S. Customs and Border Protection).

In addition, stakeholders told us they took other steps to accommodate the USAOs' prioritization of such prosecutions. For example,

- Some courts added additional daily dockets or court sessions, or adjusted their use of facilities to accommodate the higher volume of cases being prosecuted. Court officials and magistrate judges we spoke with in all five southwest border districts told us that magistrate judges spent more time presiding over improper entry cases as the number of those cases increased. In McAllen, Texas, for example, court and USAO officials told us that the court added a second daily docket for misdemeanor improper entry cases in May 2018, and doubled the court's capacity to hear such cases. In Las Cruces, New Mexico, court officials told us that there is one magistrate judge on duty each day for the docket that includes improper entry cases. Federal defenders in Las Cruces told us that stakeholders in Las Cruces, including the court, federal defenders, and USMS, met in spring 2018 and decided to use a second courtroom for magistrate judge duty—including improper entry cases—each day. One courtroom is used for an active proceeding while the other is used to meet and counsel defendants prior to their active court proceeding.
- In some locations, FDO told us that they developed new practices to provide representation to each defendant appearing in court. For example, the Federal Defender office in McAllen developed an "all hands on deck" process in May 2018, in which all available defenders meet individually with defendants in the courtroom before their initial appearance in court each day. In October 2018, we observed 14 Assistant Federal Public Defenders in McAllen meet with about 72 defendants during the hour before court; federal defenders we spoke with in McAllen said that the process we observed is their daily routine. In San Diego, federal defenders told us that in July 2018, they assigned a team to work full-time on improper entry cases. The team included six trial attorneys, two appellate attorneys, two legal assistants, two investigators, and one interpreter. The courts also increased their use of private defense attorneys appointed under the Criminal Justice Act and interpretation services due to the increased number of immigration-related cases.³⁰

³⁰See 18 U.S.C. § 3006A.

DOJ Increased Prosecutions of One-Day Improper Entry Cases in 2018, and Improper Entry Case Practices Varied Across Districts

Several USAO districts were able to quickly increase the number of improper entry prosecutions in response to the Attorney General's 2017 and 2018 memoranda, to the extent practicable, because such misdemeanor cases are less resource-intensive and less complicated to prosecute than felonies such as illegal reentry or alien smuggling, according to USAO officials in all five southwest border districts.³¹ Specifically, many improper entry cases were completed in one-day court proceedings in fiscal year 2018, and in some locations, the cases of 75 or more improper entry defendants were completed each day during a single court proceeding.

In three of the five USAO districts—Arizona, Texas Southern, and Texas Western—improper entry prosecutions in fiscal year 2018 generally took place in one-day court proceedings. Based on our analysis of DOJ data, about 84 percent of the 62,000 improper entry cases filed in fiscal year 2018, or about 52,000 improper entry cases, took place in these three districts. We observed proceedings in Arizona and Texas Southern in July and October of 2018, respectively. These proceedings lasted approximately two hours, during which time 50 to 75 improper entry prosecutions were completed. In these proceedings, the initial hearing, presentation of evidence, plea, and sentencing took place during a single day—or a single morning or afternoon—in court. On the basis of our observations in Arizona and Texas Southern, as well as interviews with agency officials in Arizona, Texas Southern, and Texas Western between July 2018 and November 2018, first-time offenders without a prior criminal history typically pled guilty to the improper entry offense and were sentenced to time served.³² Those defendants remained in the custody of the arresting agency for the duration of the criminal court proceeding, according to Border Patrol and USMS officials at headquarters and agency officials in these three districts. At the time of our visits to the Arizona and Texas Southern districts, we observed

³¹Prosecutors in several USAOs we spoke with told us that felony immigration-related prosecutions, such as illegal reentry prosecutions, generally took months to complete.

³²A time served sentence is when a defendant is sentenced to the same term of imprisonment that the defendant is credited with serving while in custody awaiting trial. The sentence results in the defendant's release from, or lack of remand to, DOJ custody.

judges sentence some defendants with a prior improper entry conviction to terms of imprisonment ranging from 10 to 180 days. The judge remanded these defendants to USMS custody to serve their sentence.

In the other two USAO districts—California Southern and New Mexico—most improper entry prosecutions took place over the course of approximately one week, based on our observations of such prosecutions in California Southern and interviews with agency officials in California Southern and New Mexico in October and November 2018. Based on our analysis of DOJ data, about 16 percent of improper entry cases filed in fiscal year 2018, or about 10,000 cases, took place in these districts. After an initial appearance in court, the judge remanded the defendant to USMS custody and set a subsequent hearing for three to four days later. At the second hearing, the defendant typically pled guilty to the improper entry offense and the judge sentenced them. First-time offenders typically pled guilty to the improper entry offense and were sentenced to time served.

The USAOs' ability to increase improper entry prosecutions was also affected by different practices in the federal criminal process for improper entry cases in each of the five southwest border districts, as shown in table 4.³³ In some locations, these practices affected the extent to which prosecutors could accept all improper entry cases referred for prosecution. According to officials from the Offices of the Attorney General and the Deputy Attorney General, DOJ contemplated such variation in its directives to federal prosecutors. Further, according to agency officials, practices for improper entry cases may change over time, depending on the priorities of various stakeholders in the federal criminal process, physical space limitations, or availability of resources such as interpreters, among other reasons.

³³Additional information about prosecutions in the five southwest border districts is provided in appendix II.

Table 4: Federal Criminal Process for Improper Entry Cases, by U. S. Attorney District, as of 2018

Practice description	Arizona	California Southern	New Mexico	Texas Southern	Texas Western
One-day improper entry prosecution	Y	N	N	Y	Y
In general, all amenable single adults are prosecuted ^a	N	N	Y	N	Y
Maximum number of improper entry cases set per day	Y	Y	N	N	N
Defender to defendant ratio requirements for improper entry cases	Y	Y	N	N	N
Defendant may be represented by private attorney appointed under the Criminal Justice Act as a public defender ^b	Y	Y	Y	N	Y
Defendant must appear before judge the next court day after arrest	N	Y	N	N	N
Court requires medical screening before defendant's court appearance	N	Y	N	N	N
Defendants may be released on bail bond after their initial appearance in court ^c	N	Y	N	N	N
Defendants may be restrained during improper entry proceedings ^d	Y	N ^d	Y	Varies ^e	Y

Legend: Y = yes, statement applies to this district; N = no, statement does not apply to this district.

Source: GAO. | GAO-20-172

Note: Our observations of court proceedings and interviews with U.S. Attorney's Office, U.S. Marshals Service, U.S. Border Patrol, and federal judiciary officials took place between July 2018 and November 2018. This table reflects the practices we observed or that were described to us during this period. Practices may vary by court location or by judge within a district or to be consistent with circuit court precedent.

^aBorder Patrol officials in Del Rio said that in certain circumstances, such as for humanitarian reasons or if the individual was elderly or had medical problems, they might not refer an otherwise amenable single adult for prosecution.

^bSee 18 U.S.C. § 3006A.

^cA bail bond can be set by a court to guarantee that the defendant will appear in court in the future if the defendant is released. In considering whether to grant bond and the amount of the bond, a court will, consistent with judicial precedent, consider a number of factors such as how long the defendant has lived in the area, if they have family nearby, their prior criminal record, if they have threatened any witnesses in the case, and the defendant's potential danger to the community, among other factors.

^dAccording to U.S. Marshals Service officials, courtroom procedures for the use of restraints, such as handcuffs, leg restraints, and/or belly chains, may vary across time, districts, courtrooms, court proceedings, and individual defendants based on a number of factors, such as the preference of the judge and the resources available. The level of restraints permitted is one factor affecting the number of personnel required to perform judicial security. According to U.S. Marshals Service officials, policy dictates that the U.S. Marshals Service must provide more U.S. Marshals in courtrooms when defendants are not restrained.

^eAccording to court officials, magistrate judges in Texas Southern have varying practices regarding the use of restraints for improper entry defendants in their courtrooms.

As of November 2018, Border Patrol referred nearly all single adults who could be charged with improper entry to the USAOs for prosecution in some districts, according to Border Patrol officials and Border Patrol's

operational guidance in those districts. In these locations, officials from Border Patrol, USAO, and the federal judiciary told us that they had sufficient capacity to process all such cases. In other districts, Border Patrol referred a lower percentage of single adults for prosecution for improper entry based on the ability of the USAO to accept such referrals or other factors, consistent with DHS's May 2018 memorandum. For example, in Tucson, Arizona, the court generally allowed 75 improper entry cases per day at the time of our July 2018 visit. However, in McAllen, Texas, court officials told us that the court would hear as many improper entry cases as the USAO accepted for prosecution, which was as many as 200 cases per day, as of our October 2018 visit. At the time of our visits in July and October 2018, other considerations affecting the number of improper entry prosecutions included Border Patrol's capacity to process case referrals (Texas Southern), restrictions on the number of daily defendants that the court could accommodate (Arizona, California Southern), and physical constraints, such as the number of seats for defendants in the courtroom (Texas Southern).³⁴

In addition, public defense practices for misdemeanor improper entry cases varied across districts and, in some locations, affected the number of improper entry cases that the USAO could file each day. In California Southern and Arizona, each public defender represented a maximum of 4 or 6 defendants in court each day, respectively, in October 2018 and July 2018. In Texas Southern, one public defender may represent up to 100 defendants in court at a time, as of October 2018, according to defender office staff. Furthermore, local court rules or practices in some locations affected the number of improper entry cases that Border Patrol could refer or the USAO could file each day. For example, in California Southern, as of October 2018, the court required defendants to appear in court the next court day after their arrest.³⁵ In addition, all defendants

³⁴In addition, Border Patrol changed the criteria it used to identify adults amenable to improper entry prosecution in response to the Attorney General's April 2018 memorandum. Between May 4, 2018 and June 20, 2018, Border Patrol referred some adults traveling with their minor children to the USAO for improper entry prosecution in all Border Patrol sectors on the southwest border, which resulted in these adults being separated from their children. Between July 2017 and November 2017, a Border Patrol prosecution initiative in the El Paso Sector also resulted in the separation of some adults from their children due to a prosecution referral for improper entry.

³⁵This is known as prompt presentment, a rule of criminal procedure that generally requires that criminal defendants are taken without unnecessary delay before a magistrate judge upon arrest. In most other southwest border courts, defendants presented in court within 48 hours of their arrest are considered to have met the prompt presentment requirement.

were required to undergo a medical screening for tuberculosis before their initial appearance in court.

DHS Referred, and DOJ Prosecuted, More Immigration-Related Cases in Fiscal Year 2018 than in Each of the Four Prior Fiscal Years

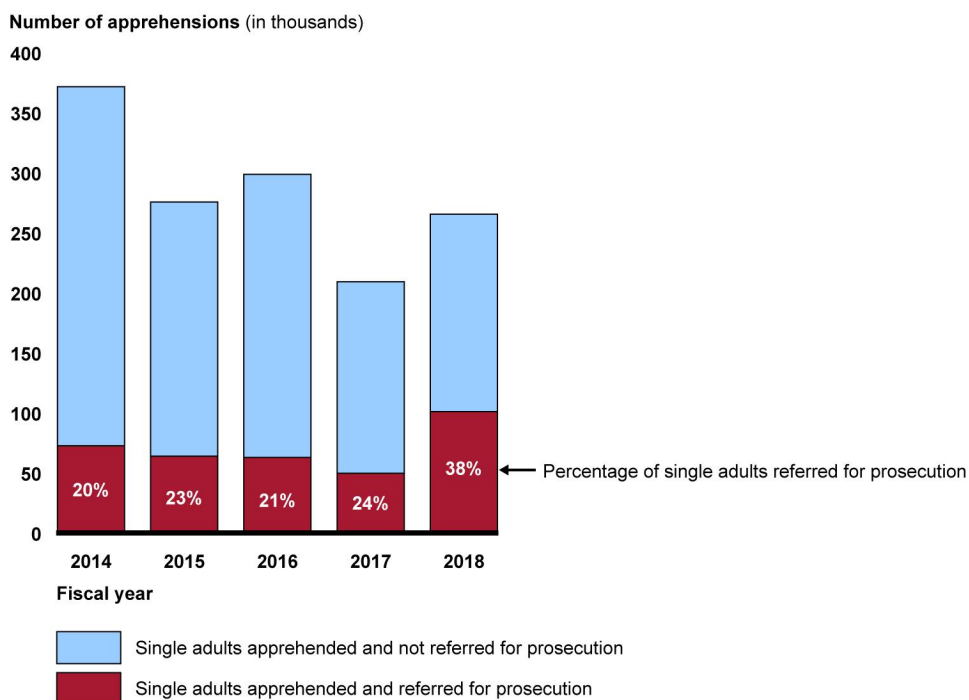
Border Patrol Referred More Cases to DOJ for Prosecution in Fiscal Year 2018 than in Each of the Four Prior Fiscal Years, and the Number of Referrals Varied by Location

Border Patrol data indicate that the number of single adults referred to USAOs for prosecution more than doubled from fiscal year 2017 (about 49,700) to fiscal year 2018 (about 101,000), and was higher in fiscal year 2018 than in each of the four prior fiscal years.³⁶ The total number of single adults Border Patrol apprehended varied from year to year over this time and Border Patrol data indicate that fewer single adults were apprehended in both fiscal years 2017 and 2018 than in each of the three prior fiscal years. However, the proportion of apprehended single adults that Border Patrol referred for prosecution was higher in fiscal year 2018

³⁶Border Patrol maintains record-level data on apprehensions and prosecution referrals and makes the vast majority of immigration-related prosecution referrals on the southwest border. OFO began tracking prosecution referrals in fiscal year 2018; OFO officials in each of the five southwest border districts told us that the number of immigration-related prosecution referrals they make is very small relative to Border Patrol. Based on data availability and the relative number of Border Patrol prosecution referrals compared to OFO prosecution referrals, we have focused our analysis on those prosecutions of single adults—that is, adults that were not processed by Border Patrol as members of family units—referred to USAO by Border Patrol. As previously stated, Border Patrol's e3 system does not allow individuals processed as members of family units to also be referred for prosecution; Border Patrol implemented a system update in e3 that allowed it to track family members that were separated from their family unit due to prosecution referral, among other reasons, in April 2018. We have excluded the individuals who Border Patrol data indicate were members of a family unit and referred for prosecution from our analysis.

(38 percent) than in each of the four prior fiscal years (ranging from 20 to 24 percent) (see fig. 3).³⁷

Figure 3: U.S. Border Patrol Single Adult Apprehensions and Prosecution Referrals to U.S. Attorney’s Offices in U.S. Southwest Border Districts, Fiscal Years 2014-2018



Source: GAO analysis of Border Patrol data. | GAO-20-172

³⁷Based on our analysis of Border Patrol data, Border Patrol determined that about 6 percent of the approximately 1,420,000 single adults apprehended between fiscal years 2014 and 2018 were not deportable. We included these non-deportable single adults in our analysis of Border Patrol apprehensions and prosecution referrals because, according to Border Patrol officials, non-deportable single adults, including U.S. citizens, may be referred for prosecution for crimes including alien smuggling, among others. Between 2014 and 2018, Border Patrol apprehended approximately 91,000 single adults, including about 79,000 U.S. citizens, who Border Patrol determined were not deportable. Border Patrol data indicate that about 13,000 non-deportable single adults were referred for prosecution from fiscal years 2014 through 2018. About 4 percent of all prosecution referrals from 2014 through 2018 were of non-deportable single adults.

Data table for Figure 3: U.S. Border Patrol Single Adult Apprehensions and Prosecution Referrals to U.S. Attorney's Offices in U.S. Southwest Border Districts, Fiscal Years 2014-2018

Year	Single adults apprehended and referred for prosecution	Single adults apprehended and not referred for prosecution	Percentage of single adults referred for prosecution
2014	72577	298925	20
2015	63927	211668	23
2016	62888	235775	21
2017	49726	159409	24
2018	101007	164367	38

Note: For this report, single adults are those adults age 18 or older at the time of their apprehension who Border Patrol did not process as a member of a family unit. Border Patrol apprehensions include deportable and non-deportable single adults, as determined by Border Patrol; both are included in this figure because, according to Border Patrol officials, non-deportable single adults, including U.S. citizens, may be apprehended and referred to the U.S. Attorney's Office for criminal prosecution.

On the basis of our analysis of Border Patrol data, USAOs declined approximately 8 percent of Border Patrol's criminal prosecution referrals in fiscal year 2018. In the four prior fiscal years, USAOs declined between 2 and 4 percent of such Border Patrol referrals. However, in fiscal year 2018, the number of cases Border Patrol referred for prosecution—and the number of cases that were accepted and prosecuted by USAOs—was also substantially higher compared to prior years, which was consistent with DHS and Border Patrol guidance to increase prosecution referrals to the extent practicable and consistent with DOJ partners' and federal court capacity. The reasons for declinations varied and included timing and capacity-related reasons, according to Border Patrol's data and officials. For example, defendants must generally appear before a judge within 48 hours of their Border Patrol apprehension and, according to Border Patrol officials, the remote locations of some apprehensions can make it difficult for Border Patrol to process, transport, and present defendants in court within the required timeframe.

Border Patrol data indicate that apprehensions of single adults in fiscal year 2018 varied by U.S. Attorney district and, in general, Border Patrol referred a greater proportion of those apprehended for prosecution in districts with a relatively low number of apprehensions. Specifically, in the two districts with the fewest apprehensions (New Mexico and Texas Western, with about 10,000 and about 26,000 apprehensions, respectively), Border Patrol referred 80 and 75 percent of those apprehended for prosecution in fiscal year 2018. In the remaining three districts (Arizona, California Southern, and Texas Southern), each of

which had more than 53,000 single adult apprehensions in fiscal year 2018, Border Patrol referred between 14 and 45 percent of those apprehended for prosecution in fiscal year 2018.³⁸ According to Border Patrol officials in these three districts, various factors influenced the number of referrals to USAOs, including court capacity, availability of Border Patrol agents to prepare cases for referral, and USAO capacity to accept and prosecute cases, consistent with the Attorney General's guidance to prioritize such prosecutions to the extent practicable.³⁹

Immigration-Related Prosecutions Increased in Fiscal Year 2018, and More than Half Were for Improper Entry

DOJ prosecuted more immigration-related cases—including improper entry, illegal reentry, and alien smuggling cases—in fiscal year 2018 than in each of the prior four fiscal years. Specifically, southwest border USAOs filed about 91,000 improper entry, illegal reentry, and alien smuggling cases in fiscal year 2018, compared to a prior four-year high of about 78,000 immigration-related cases filed in 2014. On the basis of our analysis of DOJ data, cases with a lead charge of improper entry comprised more than half of DOJ's immigration-related cases filed each year from fiscal years 2014 through 2018.⁴⁰ Further, the total number of cases filed with a lead charge of improper entry, illegal reentry, or alien

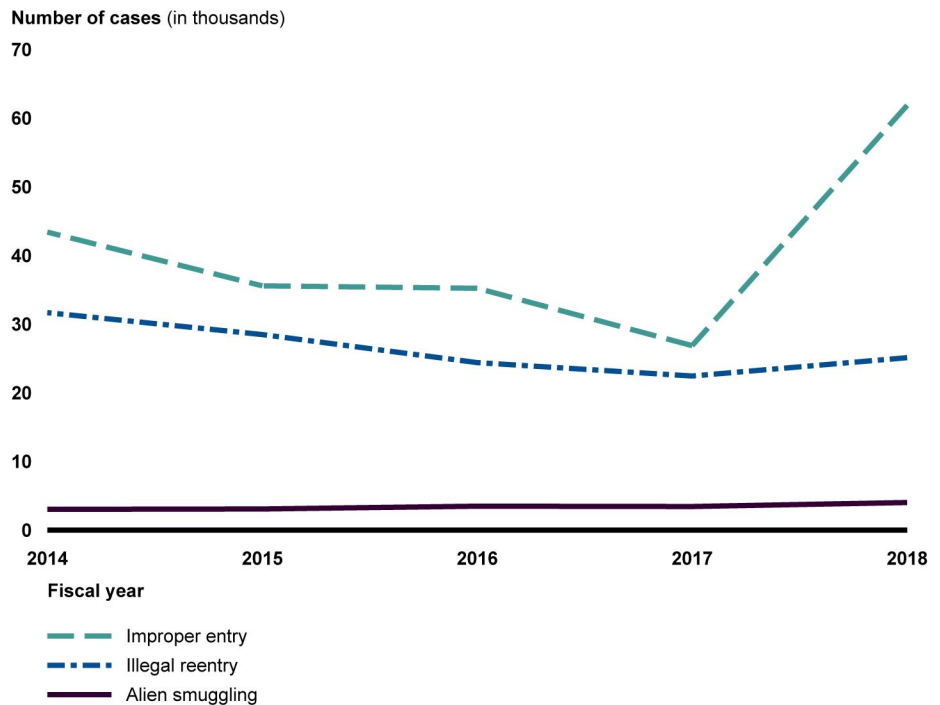
³⁸Based on our analysis of Border Patrol data, in 2018, Border Patrol determined that about 7 percent of the approximately 265,000 single adults apprehended in fiscal year 2018 were not deportable. We included these non-deportable single adults in our analysis of Border Patrol apprehensions and prosecution referrals because, according to Border Patrol officials, non-deportable single adults, including U.S. citizens, may be referred for prosecution for crimes including alien smuggling, among others. In 2018, Border Patrol apprehended approximately 20,000 single adults, including about 16,000 U.S. citizens, who Border Patrol determined were not deportable. Border Patrol data indicate that about 3,300 non-deportable single adults were referred for prosecution in fiscal year 2018. About 3 percent of all prosecution referrals in fiscal year 2018 were of non-deportable single adults.

³⁹Specific data on the proportion of apprehended single adults referred for prosecution by southwest border district in fiscal year 2018 is omitted from this report because CBP deemed these data to be sensitive.

⁴⁰We analyzed EOUSA's data by lead charge. The lead charge is typically the most serious of the charged offenses at the time the USAO files the case, according to EOUSA officials. A case with one lead charge may have multiple sub-charges or sub-offenses. A case may or may not end with a conviction or acquittal for the lead charge. For example, a case filed with a lead charge of illegal reentry may, as a result of decisions made by attorneys, judges, and the defendant during the court proceedings, end with a guilty plea for improper entry.

smuggling increased between fiscal year 2017 and fiscal year 2018 in the five southwest border districts, consistent with the priorities in the April 2017 and April 2018 memoranda, although the magnitude of the increases varied.⁴¹ Figure 4 illustrates the number of cases filed by USAOs with a lead charge of improper entry, illegal reentry, or alien smuggling along the southwest border, as well as trends in such cases from fiscal years 2014 through 2018.

Figure 4: Improper Entry, Illegal Reentry, and Alien Smuggling Cases Filed by U.S. Attorney's Offices in U.S. Southwest Border Districts, by Lead Charge, Fiscal Years 2014 through 2018



Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

⁴¹We also analyzed immigration-related cases of visa fraud, assault on an officer, and aggravated identify theft. However, these charges are not included in our analysis because, on the basis of our analysis, we determined that they occurred infrequently (about 1 percent of immigration-related cases, or about 2,500 cases filed on the southwest border from fiscal years 2014 through 2018) relative to improper entry, illegal reentry, and alien smuggling (about 99 percent of immigration-related cases, or about 352,100 cases filed on the southwest border from fiscal years 2014 through 2018).

Data table for Figure 4: Improper Entry, Illegal Reentry, and Alien Smuggling Cases Filed by U.S. Attorney's Offices in U.S. Southwest Border Districts, by Lead Charge, Fiscal Years 2014 through 2018

Year	Alien Smuggling	Illegal Reentry	Improper Entry
2014	3025	31670	43399
2015	3079	28480	35572
2016	3484	24395	35225
2017	3437	22443	26866
2018	4017	25112	61851

Note: The lead charge is typically the most serious of the charged offenses at the time the U.S. Attorney's Office files the case, according to Executive Office for U.S. Attorneys officials.

From fiscal year 2014 through 2018, more than 95 percent of improper entry, more than 90 percent of illegal reentry, and more than 80 percent of alien smuggling cases ended in convictions.⁴² The majority of defendants for improper entry and illegal reentry cases from fiscal years 2014 through 2018 were Mexican nationals, although the proportion of defendants with nationalities other than Mexican increased in fiscal year 2018 relative to the prior four fiscal years. The majority of defendants for alien smuggling cases from fiscal years 2014 through 2018 were U.S. nationals. See appendices II and III for more detailed information on case dispositions and nationalities of defendants.

Improper entry. DOJ data indicate that the total number of cases filed with a lead charge of improper entry in southwest border districts more than doubled between fiscal year 2017 and 2018, as illustrated in table 5.

Table 5: Cases Filed by U.S. Attorney's Offices in U.S. Southwest Border Districts with a Lead Charge of Improper Entry, Fiscal Years 2014 through 2018

District	2014	2015	2016	2017	2018	Percent change from 2017-2018
Arizona	4,326	1,592	827	2,959	6,606	123
California Southern	216	186	640	577	5,426	834
New Mexico	99	112	148	1,486	4,573	208
Texas Southern	25,049	21,654	19,038	10,774	30,129	180

⁴²To calculate the percent of improper entry, illegal reentry, and alien smuggling cases with guilty pleas, we included cases that have dispositions and excluded cases that do not yet have dispositions, as indicated in EOUSA data. In other words, these dispositions reflect those cases that EOUSA data indicates were initially filed between fiscal years 2014 and 2018 and were completed, as of September 30, 2018.

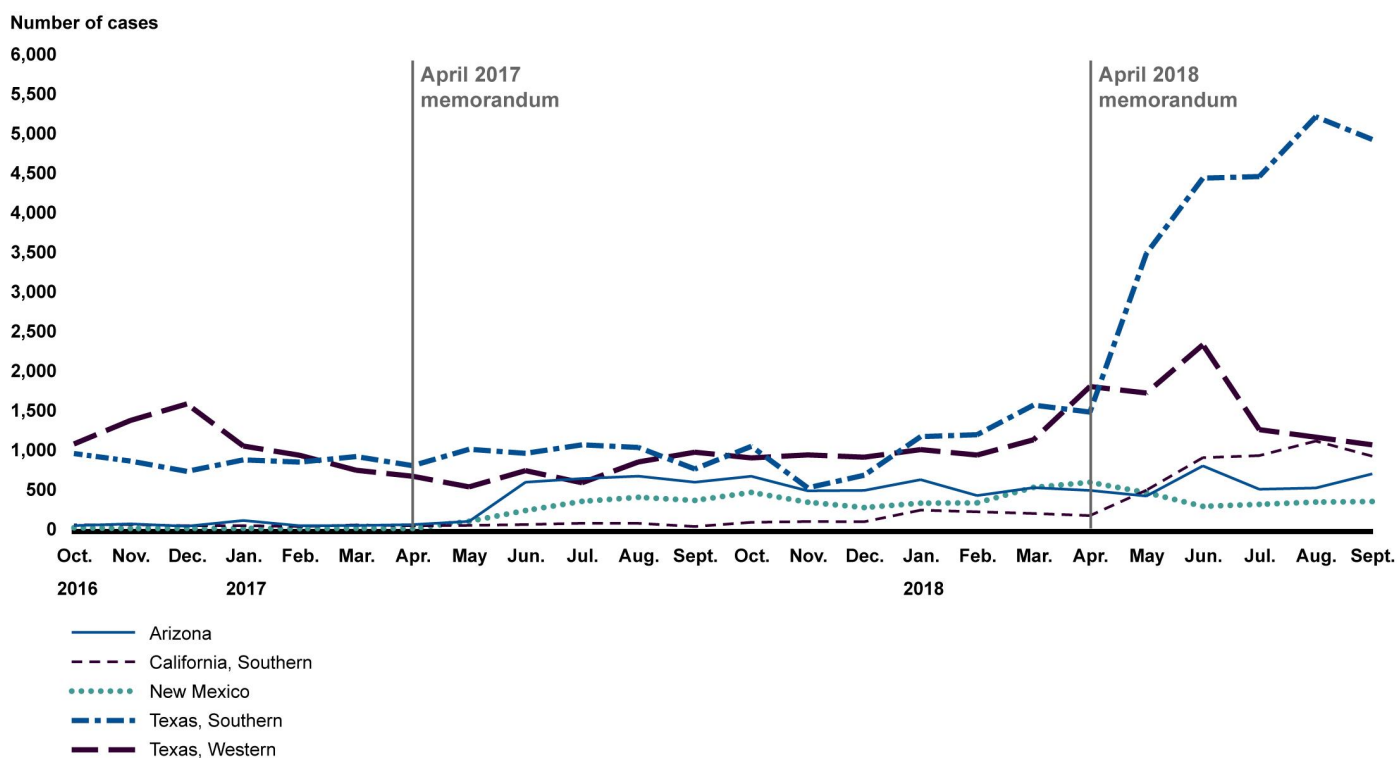
District	2014	2015	2016	2017	2018	Percent change from 2017-2018
Texas Western	13,709	12,028	14,572	11,070	15,117	37
Total	43,399	35,572	35,225	26,866	61,851	130

Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

Note: The lead charge is typically the most serious of the charged offenses at the time the U.S. Attorney's Office files the case, according to Executive Office for U.S. Attorneys officials.

Figure 5 illustrates the number of improper entry cases filed by southwest border USAOs each month in fiscal years 2017 and 2018.

Figure 5: Cases Filed by U.S. Attorney's Offices in U.S. Southwest Border Districts with a Lead Charge of Improper Entry, By Month, Fiscal Years 2017 and 2018



Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

Data table for Figure 5: Cases Filed by U.S. Attorney's Offices in U.S. Southwest Border Districts with a Lead Charge of Improper Entry, By Month, Fiscal Years 2017 and 2018

Date	Arizona	California Southern	New Mexico	Texas Southern	Texas Western
Oct-16	42	50	14	952	1073
Nov-16	63	55	6	857	1370
Dec-16	34	40	7	727	1579
Jan-17	106	41	7	872	1047
Feb-17	40	31	4	844	930
Mar-17	43	50	7	914	741
Apr-17	54	40	6	799	665
May-17	95	44	96	1006	531
Jun-17	590	55	232	955	736
Jul-17	636	71	348	1062	583
Aug-17	666	70	399	1029	846
Sep-17	590	30	360	757	969
Oct-17	665	83	461	1043	897
Nov-17	481	93	337	519	935
Dec-17	486	90	270	678	906
Jan-18	622	237	325	1166	1002
Feb-18	421	216	329	1190	933
Mar-18	521	195	524	1564	1126
Apr-18	486	168	589	1476	1799
May-18	415	489	458	3480	1717
Jun-18	796	900	285	4432	2327
Jul-18	501	926	310	4452	1254
Aug-18	517	1110	339	5208	1159
Sep-18	695	919	346	4921	1062

Note: The memoranda referenced in this figure are: Department of Justice, Office of the Attorney General, Renewed Commitment to Criminal Immigration Enforcement, Memorandum for All Federal Prosecutors (Washington, D.C.: April 11, 2017). (April 2017 memorandum) and Department of Justice, Office of the Attorney General, Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a), Memorandum for Federal Prosecutors Along the Southwest Border (Washington, D.C.: April 6, 2018). (April 2018 memorandum). The lead charge is typically the most serious of the charged offenses at the time the U.S. Attorney's Office files the case, according to Executive Office for U.S. Attorneys officials.

In New Mexico and Arizona, the number of improper entry cases filed increased notably in June 2017. These districts generally did not prosecute first-time entrants for these misdemeanor offenses from 2014 until 2017, and changed their prosecution practices in response to the

Attorney General's April 2017 memorandum, according to USAO officials we spoke with in those districts.⁴³

In Texas Southern, the number of improper entry cases filed increased notably in April 2018. Prior to April 2018, the USAO in McAllen allowed 40 to 50 improper entry prosecutions per day, according to USAO officials. The USAO removed this limitation in response to the Attorney General's April 2018 memorandum. As of October 2018, this USAO accepts all prosecution referrals with sufficient evidence (on average, 100 to 200 improper entry prosecutions per day), according to officials. From fiscal year 2017 through 2018, improper entry cases filed in Texas Southern nearly tripled, from about 10,800 to about 30,100 cases.

In Texas Western, the number of improper entry cases filed began to increase in March 2018, but to a lesser extent than other districts, and then decreased from July through September 2018. USAO officials attributed the increase to increased Border Patrol apprehensions and said that they accept all Border Patrol prosecution referrals, but the number of cases that the USAO receives depends on fluctuating Border Patrol apprehension numbers.

In California Southern, the number of improper entry cases filed began to increase in May 2018. Prior to July 2018, California Southern did not have a court docket dedicated to prosecuting improper entry misdemeanor offenses. According to officials, following the Attorney General's April 2018 memorandum, the San Diego district court, in coordination with the USAO, agreed to establish a daily improper entry docket with the capacity to hear initial appearances for 40 to 52 improper entry cases each day.

Illegal reentry. DOJ data indicate that the number of cases USAOs filed with a lead charge of felony illegal reentry along the southwest border declined from fiscal years 2015 through 2017 before increasing by 2,669 cases from fiscal year 2017 through 2018. However, the number of illegal reentry cases filed in fiscal year 2018 (25,112) was lower than in fiscal year 2014 (31,670) or 2015 (28,480), and the magnitude of the increase in illegal reentry cases filed from fiscal year 2017 through 2018 (12 percent) was smaller than the increase in improper entry cases during the same period (130 percent).

⁴³As previously stated, according to USAO officials in Arizona, the district did accept some improper entry cases for first-time entrants if the case had aggravating circumstances or was in targeted enforcement zones prior to June 2017.

The number of cases filed with a lead charge of illegal reentry declined in Arizona each year between fiscal years 2015 and 2018, but increased or varied in other districts. Between fiscal year 2017 and 2018, illegal reentry cases filed increased most notably in Texas Western, where there were 69 percent more illegal reentry cases filed in fiscal year 2018 than in fiscal year 2017. Federal court and USAO officials in Texas Western attributed this increase in illegal reentry prosecutions to increased Border Patrol apprehensions and referrals for prosecution in fiscal year 2018. Table 6 illustrates illegal reentry cases filed, by fiscal year, from fiscal years 2014 through 2018.

Table 6: Cases Filed by U.S. Attorney’s Offices in U.S. Southwest Border Districts with a Lead Charge of Illegal Reentry, Fiscal Years 2014 through 2018

District	2014	2015	2016	2017	2018	Percent change from 2017-2018
Arizona	19,071	16,190	12,406	11,796	10,603	-10
California Southern	1,935	1,653	1,193	1,275	1,514	19
New Mexico	3,260	3,570	3,916	2,699	3,295	22
Texas Southern	3,685	3,882	3,620	3,160	3,777	20
Texas Western	3,719	3,185	3,260	3,513	5,923	69
Total	31,670	28,480	24,395	22,443	25,112	12

Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

Note: The lead charge is typically the most serious of the charged offenses at the time the U.S. Attorney’s Office files the case, according to Executive Office for U.S. Attorneys officials.

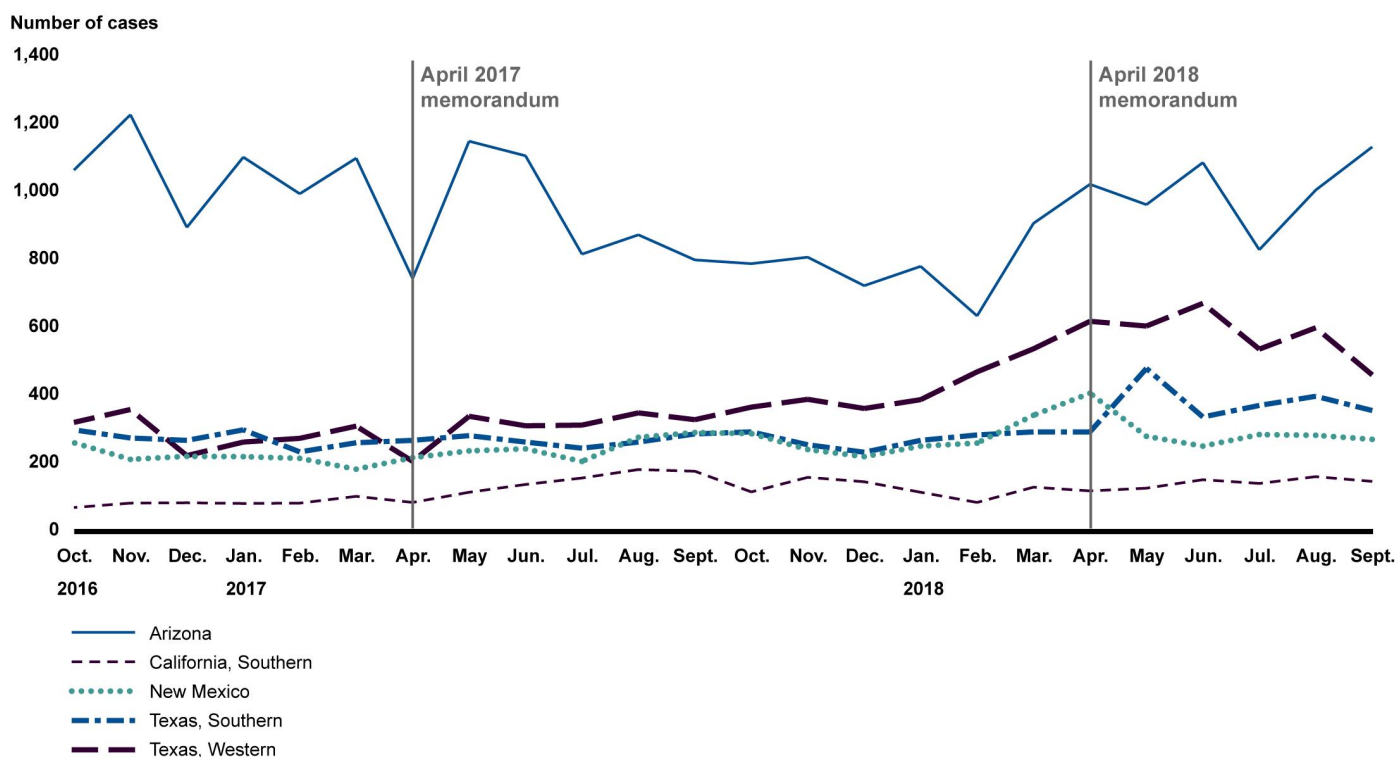
USAO officials attributed the changes in illegal reentry cases filed from fiscal year 2014 through 2018 to changes in prosecution practices as well as changes in the number of apprehensions. For instance, the New Mexico USAO removed a monthly limitation originally enacted in fiscal year 2016 on the number of illegal reentry cases filed they would accept following the April 2017 memorandum, according to Border Patrol and USAO officials. Other locations have varying thresholds and practices regarding accepting, charging, and prosecuting illegal reentry cases.

- USAO officials in New Mexico and Texas Western told us that they charge defendants with illegal reentry if the defendant has one prior deportation or one prior conviction for improper entry. Officials in three other districts told us that they generally require a more extensive criminal history—for instance, they might require multiple prior improper entry convictions—to charge illegal reentry.
- USAO officials in Arizona and California said that they file cases with a lead charge of illegal reentry that might ultimately end with improper

entry convictions. For example, our analysis of EOUSA data indicates that of almost 12,000 illegal reentry cases filed in Arizona in fiscal year 2017, approximately 77 percent ended with an improper entry conviction and approximately 18 percent ended with an illegal reentry conviction.

Figure 6 illustrates the number of cases filed with a lead charge of illegal reentry filed each month in fiscal years 2017 and 2018.

Figure 6: Cases Filed by U.S. Attorney's Offices in U.S. Southwest Border Districts with a Lead Charge of Illegal Reentry, By Month, Fiscal Years 2017 and 2018



Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

Data table for Figure 6: Cases Filed by U.S. Attorney's Offices in U.S. Southwest Border Districts with a Lead Charge of Illegal Reentry, By Month, Fiscal Years 2017 and 2018

Date	Arizona	California Southern	New Mexico	Texas Southern	Texas Western
Oct-16	1058	63	254	292	314
Nov-16	1221	76	205	268	352
Dec-16	889	77	214	261	216
Jan-17	1096	75	213	292	256

Date	Arizona	California Southern	New Mexico	Texas Southern	Texas Western
Feb-17	988	76	208	227	267
Mar-17	1093	96	176	254	303
Apr-17	738	78	210	261	199
May-17	1143	108	230	275	332
Jun-17	1100	131	236	256	304
Jul-17	810	150	199	238	306
Aug-17	867	175	270	256	342
Sep-17	793	170	284	280	322
Oct-17	782	109	281	286	359
Nov-17	801	152	234	248	382
Dec-17	717	139	213	226	355
Jan-18	774	108	244	261	381
Feb-18	628	78	253	277	463
Mar-18	901	123	335	286	531
Apr-18	1016	112	400	286	612
May-18	956	120	273	473	598
Jun-18	1080	145	244	330	665
Jul-18	823	134	278	364	530
Aug-18	999	154	276	391	593
Sep-18	1126	140	264	349	454

Note: The memoranda referenced in this figure are: Department of Justice, Office of the Attorney General, Renewed Commitment to Criminal Immigration Enforcement, Memorandum for All Federal Prosecutors (Washington, D.C.: April 11, 2017) (April 2017 memorandum) and Department of Justice, Office of the Attorney General, Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a), Memorandum for Federal Prosecutors Along the Southwest Border (Washington, D.C.: April 6, 2018) (April 2018 memorandum). The lead charge is typically the most serious of the charged offenses at the time the U.S. Attorney's Office files the case, according to Executive Office for U.S. Attorneys officials.

Alien smuggling. DOJ data indicate that the number of cases filed with a lead charge of alien smuggling increased in four of the five southwest border districts from fiscal year 2017 through 2018. Officials from two USAO locations along the southwest border told us that they changed their thresholds for how many material witnesses (individuals being smuggled) must be present to accept an alien smuggling referral in response to the Attorney General's April 2017 memorandum. For instance, the USAO in San Diego lowered the threshold for accepting alien smuggling referrals and, following the April 2017 memorandum, places equal priority on all alien smuggling referrals. Prior to the April 2017 memorandum, the USAO would have considered several factors when deciding whether to accept the referral, such as if there was a risk of harm to the material witnesses or whether the conviction could result in a significant term of imprisonment for the smuggler.

Table 7: Cases Filed by U.S. Attorney's Offices in U.S. Southwest Border Districts with a Lead Charge of Alien Smuggling, Fiscal Years 2014 through 2018

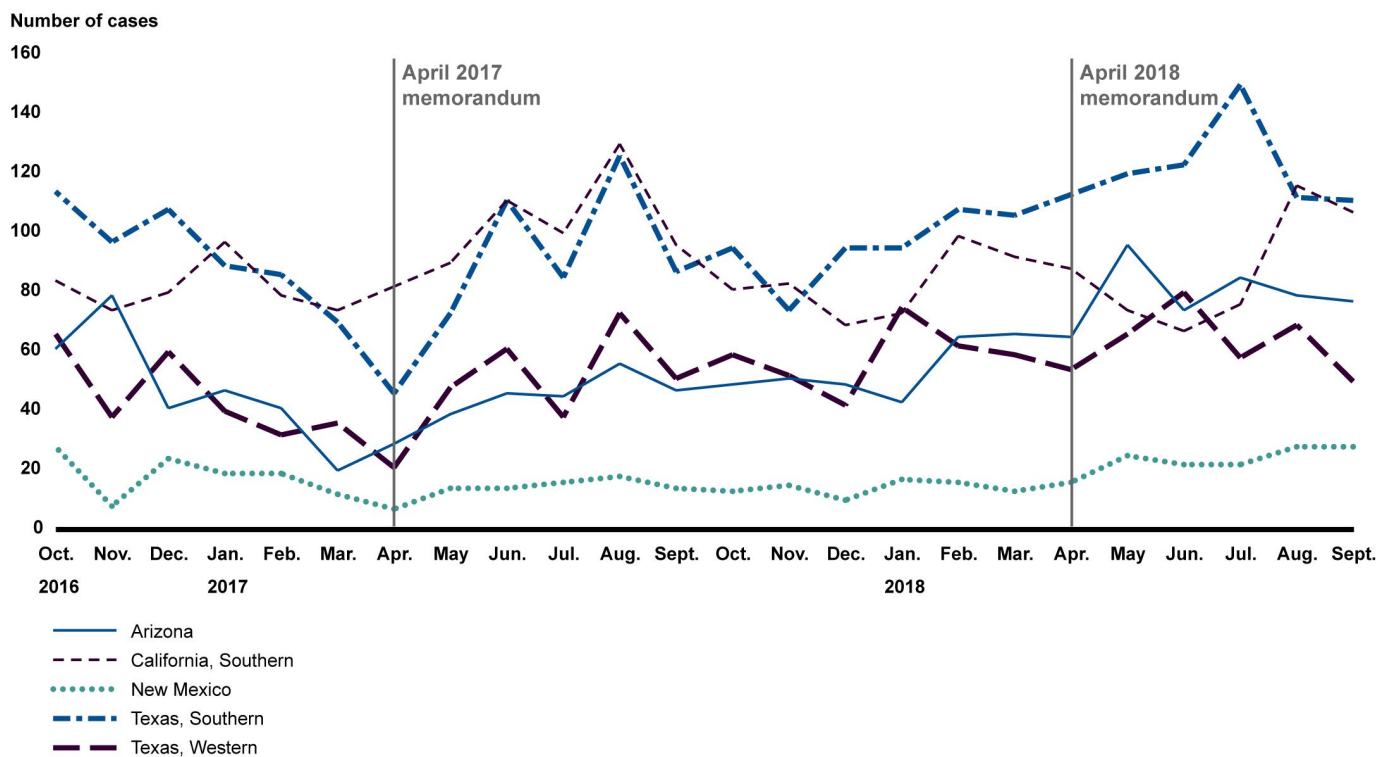
District	2014	2015	2016	2017	2018	Percent change from 2017-2018
Arizona	813	802	642	539	787	46
California Southern	514	541	648	1,085	1,013	-7
New Mexico	87	115	166	181	213	18
Texas Southern	1,198	1,192	1,491	1,080	1,290	19
Texas Western	413	429	537	552	714	29
Total	3,025	3,079	3,484	3,437	4,017	17

Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

Note: The lead charge is typically the most serious of the charged offenses at the time the U.S. Attorney's Office files the case, according to Executive Office for U.S. Attorneys officials.

Figure 7 illustrates the number of cases filed with a lead charge of alien smuggling each month over fiscal years 2017 and 2018.

Figure 7: Cases Filed with a Lead Charge of Alien Smuggling, By Month, by Southwest Border District, Fiscal Years 2017 and 2018



Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

Data table for Figure 7: Cases Filed with a Lead Charge of Alien Smuggling, By Month, by Southwest Border District, Fiscal Years 2017 and 2018

Date	Arizona	California Southern	New Mexico	Texas Southern	Texas Western
Oct-16	60	83	27	113	65
Nov-16	78	73	7	96	37
Dec-16	40	79	23	107	59
Jan-17	46	96	18	88	39
Feb-17	40	78	18	85	31
Mar-17	19	73	11	69	35
Apr-17	28	81	6	45	20
May-17	38	89	13	72	47
Jun-17	45	110	13	110	60
Jul-17	44	99	15	84	37
Aug-17	55	129	17	125	72

Date	Arizona	California Southern	New Mexico	Texas Southern	Texas Western
Sep-17	46	95	13	86	50
Oct-17	48	80	12	94	58
Nov-17	50	82	14	73	51
Dec-17	48	68	9	94	41
Jan-18	42	72	16	94	74
Feb-18	64	98	15	107	61
Mar-18	65	91	12	105	58
Apr-18	64	87	15	112	53
May-18	95	73	24	119	65
Jun-18	73	66	21	122	79
Jul-18	84	75	21	149	57
Aug-18	78	115	27	111	68
Sep-18	76	106	27	110	49

Note: The memoranda referenced in this figure are: Department of Justice, Office of the Attorney General, Renewed Commitment to Criminal Immigration Enforcement, Memorandum for All Federal Prosecutors (Washington, D.C.: April 11, 2017). (April 2017 memorandum) and Department of Justice, Office of the Attorney General, Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a), Memorandum for Federal Prosecutors Along the Southwest Border (Washington, D.C.: April 6, 2018). (April 2018 memorandum). The lead charge is typically the most serious of the charged offenses at the time the U.S. Attorney's Office files the case, according to Executive Office for U.S. Attorneys officials.

Agencies Realigned Existing Resources and Allocated Additional Resources to Help Increase Immigration-Related Prosecutions

Agencies Along the Southwest Border Shifted Existing Resources to Support Increased Immigration-Related Prosecutions

DOJ, DHS, and the federal judiciary realigned resources to support the prosecution priorities outlined in the April 2017 and April 2018 memoranda. Officials from USAOs, USMS, Border Patrol, federal courts, and federal defenders along the southwest border told us that they are using more personnel, physical space, or both to support increased immigration-related prosecutions than they were prior to DOJ's prioritization of immigration enforcement in April 2017. When USAOs along the southwest border changed their prosecutorial priorities and realigned resources in response to the April 2017 and April 2018

memoranda, other agencies, such as USMS and the federal judiciary, also realigned resources to respond to and support increased immigration-related prosecutions. In some cases, these realignments affected their ability to conduct other activities. Officials from USMS and the courts told us that, as stakeholders in the federal criminal process, they are accustomed to reacting to changing conditions that may affect their operations. For example, these officials' operations could be affected by changes in the number of Border Patrol apprehensions, changes in Border Patrol's prosecution referral priorities, changes in the location of drug or human smuggling activity, and changing USAO prosecutorial priorities, among other things.

USAOs. USAO officials in three locations stated that the more time prosecutors spend on reactive work—such as misdemeanor or felony immigration-related cases—the less time Assistant U.S. Attorneys (AUSA) have to work on other issue areas, including proactive cases that may take months or years of work to build, or civil cases. For instance, USAO officials from Texas Southern said that the high immigration caseload in McAllen affects AUSAs' ability to prosecute other types of cases, such as Organized Crime Drug Enforcement Task Force cases, which tend to be long-term cases.⁴⁴ According to USAO officials in San Diego, when prosecutors began accepting improper entry referrals in July 2018, there was a short-term decline in the number of prosecutions that were initiated for other cases. This decline mainly affected drug and alien smuggling cases, some of which were referred to state or local prosecutors, according to USAO officials in San Diego. As of October 2018, USAO officials in San Diego said that improper entry prosecutions were not affecting their ability to accept referrals for new felony prosecutions.

USMS. According to USMS officials, each additional court docket, courtroom in use, or immigration-related defendant who appears in court requires judicial security support. USMS officials in all five southwest border locations told us that they took actions to meet the judicial security mission need, but that the increased prosecutions have strained their staff. USMS officials we spoke with in all five southwest border districts said that they reassigned deputies in fiscal year 2018 from proactive task forces (such as task forces dedicated to arresting individuals with active

⁴⁴The Organized Crime and Drug Enforcement Task Force was established to coordinate and channel federal law enforcement agencies against national and transnational criminal organizations involved in drug trafficking and money laundering.

federal warrants) to judicial security court duty and detention security to support increased immigration-related prosecutions. In particular, USMS officials said that they assigned more deputies to judicial security court duty because of the increase in improper entry prosecutions.⁴⁵ USMS officials we spoke with in several locations on the southwest border said that the increased judicial security duty has made it difficult for their deputies to meet their training requirements. They are concerned that the high demand for judicial security in southwest border districts may affect their ability to retain deputies.

Officials from USMS in multiple locations along the southwest border told us that the increase in immigration-related prosecutions strained their existing detention space. For instance, California Southern required additional detention space for defendants in improper entry cases, and could not locate additional detention space nearby or within the judicial district.⁴⁶ As a result, USMS officials told us in October 2018 that deputies may drive defendants to neighboring judicial districts, including California Central, Nevada, and Arizona, to detain them before and between court appearances. According to USMS officials, providing transportation for such defendants can comprise deputies' entire shifts. Additionally, officials in the Texas Western district told us in November 2018 that due to the increase in immigration-related prosecutions in fiscal year 2018, detention facilities in Del Rio reached capacity. USMS transports prisoners up to seven hours one way to other detention facilities. Further, USMS received permission to triple-bunk prisoners (using three stacked beds, rather than two stacked beds) in Del Rio and El Paso, and to use additional temporary beds, such as cots, to house additional prisoners close to courthouses.

As we have previously reported, the average daily population of USMS prisoners is directly influenced by, among other things, the activities and decisions of federal law enforcement, USAOs, and the federal judiciary.⁴⁷

⁴⁵Information on the number of U.S. Marshals moved from proactive enforcement duties to duties supporting increased immigration-related prosecutions is omitted from this report because USMS deemed that information to be sensitive.

⁴⁶California Southern's improper entry prosecutions generally take approximately four days, according to officials.

⁴⁷GAO, *Prisoner Operations: Unites States Marshals Service Could Better Estimate Cost Savings and Monitor Efforts to Increase Efficiencies*, [GAO-16-472](#) (Washington, D.C.: May 23, 2016). Average daily population is the average number of prisoners in USMS custody per day.

According to USMS data, the average daily population of immigration-related prisoners on the southwest border increased from 7,796 in May 2017 (a five-year low) to 11,668 in September 2018 (a five-year high).⁴⁸ According to USMS officials with whom we spoke and documents we reviewed, in 2018, USMS sought additional detention space. In May 2018, USMS issued a public request for information to determine the availability of contractor owned and operated secure detention facilities on the southwest border.⁴⁹ In October 2018, USMS signed intragovernmental agreements with two local detention facilities in Texas, adding approximately 655 available beds to its inventory. Additionally, USMS officials in Las Cruces told us that they had more detention space than they required for prisoners in New Mexico and that, following the April 2018 memorandum, USMS began to accept prisoners from other districts. Prior to the April 2018 memorandum, USMS in New Mexico had approximately 1,300-1,400 of their own prisoners in custody. As of November 2018, USMS in Las Cruces had approximately 1,800 prisoners in custody from New Mexico and approximately 500 prisoners in custody from neighboring districts.

Border Patrol. Border Patrol agents support, and in some cases supplement, DOJ components in both prosecution and judicial security work. As of March 2019, in nine of nine southwest border sectors, Border Patrol reported that it had detailed agents to USAOs to assist with tasks like data entry and preparing court documents for immigration-related prosecutions. In addition, in seven of nine sectors, Border Patrol detailed agents to USMS locations to assist with judicial and detention security. The number of agents from Border Patrol that are detailed to assist DOJ components with immigration-related prosecutions generally varies based on the volume of prosecutions that the USAO receives and accepts and, in some sectors, based on available Border Patrol agent resources, according to Border Patrol officials. Following the Attorney General's memoranda, Border Patrol increased the number of agents that it detailed to certain USAOs and USMS locations along the southwest border, both

⁴⁸USMS officials told us that they define immigration-related prisoners as those prisoners charged with improper entry, illegal reentry, false citizenship, alien smuggling, among other offenses. Each prisoner in USMS custody receives housing, clothing, food, medical care, and transportation to and from their court proceedings.

⁴⁹According to the request for information, responses were to be used by USMS to make appropriate acquisition decisions and to determine whether to proceed with a solicitation for management and operation of a contractor owned and operated detention facility for federal detainees awaiting trial or sentencing or hearings.

temporarily and on an ongoing basis, because of the increased volume of immigration-related prosecutions, according to Border Patrol officials. As of March 2019, Border Patrol sectors across the southwest border detailed from zero to four agents to perform USMS functions, and zero to five agents to perform USAO functions. The length of detail and duties assigned to Border Patrol agents detailed to USAOs and USMS vary by location, according to officials. Generally, when an assignment ends, Border Patrol agents return to their regular Border Patrol duties.⁵⁰

Federal courts. Federal court officials we spoke with in five locations stated that they faced challenges resulting from the increased immigration caseload. For instance, court officials in Las Cruces said that, as of November 2018, staff in the clerk's office often work on weekends to keep up with court scheduling and paperwork resulting from increased improper entry prosecutions. The Las Cruces court also implemented telework options for clerk staff to give them the option of working additional hours from home. Additionally, officials we spoke with from several courts reported that they had existing needs for judgeships, and the increasing immigration caseload placed additional strain on district and magistrate judges. For instance, the district court in Del Rio has one district judge and the number of illegal reentry prosecutions in fiscal year 2018 increased by almost 70 percent compared to fiscal year 2017. Court officials we spoke with in two locations told us that sentencing dates have been pushed out because of the increase in district judges' caseloads. According to federal court officials in Del Rio, the district judge's calendar is so full that, in some cases, a defendant's sentencing might be pushed back far enough that the defendant has already served more jail time than the federal sentencing guidelines recommend by the time the defendant is sentenced.

In addition, multiple court officials in multiple locations across the southwest border told us that increased immigration-related prosecutions, and particularly improper entry cases, increases strain on courtroom facilities and equipment and, in some instances, courts have to replace equipment and furniture more often. For example, in Tucson, Arizona, the improper entry courtroom can hold up to 75 improper entry defendants in restraints, such as handcuffs and/or leg restraints, at a time during morning improper entry proceedings, and court officials told us that the

⁵⁰The number of Border Patrol agents performing USMS and USAO functions is omitted because CBP determined this information to be sensitive.

restraints worn by defendants cause damage to the chairs and benches in the courtroom.

Defender services. FDO staff we spoke with in several southwest border districts told us that they dedicated more staff or staff time towards defendants in immigration-related cases and accommodated increased prosecutions within existing resources as of December 2018. For instance, defenders in Las Cruces stated that the court added a new docket for improper entry cases, and defense attorneys are at times scheduled to be in two courtrooms at once, and must cover for each other. Defenders in Las Cruces also told us that they have run out of physical office space for their staff. Federal defenders in McAllen said that the amount of time defense attorneys spend on improper entry interviews affects the time they can spend on felony cases. In addition, these defenders described the process of preparing 100 or more defendants for criminal proceedings each day as draining. Defenders in McAllen noted that they filed more continuances in fiscal year 2018 than in prior years as a result of the increased workload caused by the expanded improper entry docket.

DOJ, DHS, and the Federal Judiciary Added Personnel to Support Increased Immigration-Related Prosecutions in the Short and Long-Term, and Tracked Some Related Expenditures

EOUSA, USMS, Border Patrol, and the federal judiciary temporarily surged personnel from locations across the United States to the southwest border to support increased immigration-related prosecutions. These agencies tracked some costs associated with those temporarily detailed personnel, among other costs associated with increased immigration-related prosecutions. Additionally, EOUSA announced plans to hire new attorneys to prosecute immigration-related offenses in May 2018, both on the southwest border and in the interior of the United States.

EOUSA. In May and June 2018, DOJ announced plans to permanently hire 70 new AUSAs to prosecute immigration-related offenses both at the southwest border and in the interior of the U.S. Additionally, EOUSA officials told us that they subsequently received DOJ approval to hire 13 more AUSAs to work on immigration and border security issues on the

southwest border.⁵¹ In fiscal year 2018, EOUSA expended about \$9.8 million on personnel costs associated with these prosecutors—including 35 immigration crimes prosecutors in the interior of the United States, 42 immigration crimes prosecutors in the five southwest border districts, and 6 civil condemnation AUSAs working on the southwest border. EOUSA estimated that the fiscal year 2019 continuing personnel costs associated with these prosecutors would be about \$17 million. In its fiscal year 2020 Congressional Budget Justification, EOUSA requested a \$23.3 million increase in funding from Congress to sustain hiring and program operations that were initially funded in fiscal year 2018, including the immigration prosecutors.⁵² EOUSA also intends to allocate a portion of these 2020 funds to USAOs around the country with demonstrable workload challenges.

EOUSA and USAO officials said that these permanent AUSA positions would support immigration prosecutions on the southwest border in the long-term. USAO officials we spoke with in all five southwest border districts between July and November 2018 said that they were in the process of hiring these immigration AUSAs. While EOUSA was in the process of permanently hiring new AUSAs, EOUSA temporarily surged Special Assistant U.S. Attorneys (SAUSAs) to southwest border districts that needed more prosecutors to handle the increased immigration caseload.⁵³ Some of these SAUSAs prosecuted improper entry offenses specifically and others prosecuted any immigration-related case. Specifically, EOUSA solicited attorneys from other DOJ components, the Department of Defense (DOD), and CBP to serve as SAUSAs for immigration-related offenses along the southwest border.

- Beginning in June 2017, DOJ detailed 12 attorneys from non-southwest border USAOs and other DOJ components to prosecute immigration-related cases in all five districts on the southwest border. In fiscal years 2017 and 2018, EOUSA expended approximately \$440,000 on travel and lodging for these 12 SAUSAs.

⁵¹Of these 13 AUSAs, seven were to work on immigration crimes and six were to work on civil condemnations related to border issues according to officials.

⁵²In June 2018, EOUSA also announced that it would hire new AUSAs for other priority areas, including 190 new AUSAs for violent crime and 86 AUSA for civil enforcement.

⁵³SAUSAs are attorneys from other agencies or DOJ components who serve temporary details as federal prosecutors at USAOs to support the USAOs' caseloads.

- In June 2018, DOD agreed to provide military attorneys to act as SAUSAs and support immigration-related prosecutions on the southwest border. DOD detailed a total of 21 military attorneys to the southwest border for approximately six months each between June 2018 and January 2019, according to EOUSA. According to USAO officials in New Mexico, which received five military SAUSAs, and California Southern, which received five, these SAUSAs provided key support that allowed these districts to increase improper entry and illegal reentry prosecutions beginning in June 2018. In fiscal year 2018, EOUSA estimated that it expended approximately \$1,186,000 on salaries, travel, and lodging for these 21 SAUSAs.
- In some southwest border locations, CBP regularly provides SAUSAs to add prosecutor capacity to USAOs. For example, in four locations, CBP SAUSAs are the federal prosecutors for misdemeanor improper entry cases and appear daily in court to prosecute these cases. In San Diego, CBP SAUSAs began supporting the misdemeanor improper entry docket in July 2018, when the docket began. In New Mexico, 10 part-time CBP SAUSAs supported the improper entry docket temporarily between January and July 2018, which allowed New Mexico to begin prosecuting improper entry cases with no effect to the workload of its full-time AUSAs. CBP officials also said that CBP has provided full-time SAUSAs for a six or 12-month term to some USAOs on an ongoing basis, depending on USAO request and CBP workload. USAO officials have asked CBP for additional SAUSAs in San Diego and Yuma; as of April 2019, CBP officials said that due to CBP's workload in these locations, they have not agreed to additional SAUSAs in these locations.

USMS. From June through November 2018, USMS detailed deputies from non-southwest border locations to southwest border courts to support judicial security operations. Approximately 96 deputies participated in these temporary detail rotations, which lasted two to three weeks each, over the six month period. USMS established a budget code to track additional expenditures that USMS headquarters incurred related to implementing the April 2018 memorandum. These additional expenditures included travel and lodging costs for the detailed USMS deputies and transportation costs, among others. USMS reported approximately \$1,149,000 in expenditures from May through December 2018 under this budget code. In its 2020 Congressional Budget Justification, USMS requested nearly \$8 million from Congress for 35 positions to address departmental priorities and initiatives, including immigration enforcement. USMS officials said that their workload, including immigration prosecutions in fiscal year 2018 surpassed previous

peak levels. For instance, USMS reported more immigration-related “prisoners received” in 2018 than in each of the prior five fiscal years.⁵⁴

Border Patrol. Border Patrol established a budget code in April 2018 to track additional expenditures directly associated with implementing the April 2018 memorandum. In particular, according to Border Patrol budget officials and documentation, Border Patrol officials were to use the budget code to track expenditures related to detainee food, supplies, and transportation. In addition, the code was to be used for Border Patrol agent overtime expenditures and any travel expenditures that could be attributed to the April 2018 memorandum. From April 2018 through December 2018, Border Patrol reported approximately \$2,316,000 in expenditures under this budget code.

Federal judiciary. The federal judiciary sends visiting judges from other parts of the United States to southwest border districts to assist with judge caseloads, including immigration cases. For instance, the federal judiciary approved 67 visiting judge assignments from other parts of the U.S. to New Mexico and Texas Western in fiscal years 2017 and 2018; AOUSC reported expending approximately \$114,000 on travel costs for these visiting judges.

Federal courts along the southwest border also expended more funds on contracted interpreter services in fiscal year 2018 than in any of the prior four fiscal years. When a defendant does not speak English, courts may have interpreters on staff and courts may use contracted interpreter services. Court officials from multiple locations along the southwest border told us that contracted interpreter services became increasingly difficult to obtain following the increase in immigration-related prosecutions. According to federal judiciary documentation, there were 100,000 more court events, or defendant appearances before a judge, in southwest border courts requiring court interpreter services in fiscal year 2018 than there were in fiscal year 2017. Expenditures for contracted court interpreters increased by over \$450,000 from fiscal year 2017 to fiscal year 2018 for southwest border courts.

⁵⁴USMS officials told us that they measure prisoner populations in several ways. The prisoners received number indicates the number of prisoners who appear in court one or more times and is counted based on a prisoner’s first court appearance for a particular charged offense.

Agency Comments

We provided a draft of the sensitive report to DOJ, DHS, and AOUSC for their review and comment. DOJ, DHS, and AOUSC provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Attorney General of the United States, the Acting Secretary of the Department of Homeland Security, the Administrative Office of the U.S. Courts, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8777 or goodwing@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix V.

Sincerely yours,



Gretta L. Goodwin
Director, Homeland Security and Justice Issues

Appendix I: Objectives, Scope, and Methodology

This appendix provides additional details on our objectives, scope, and methodology. Specifically, our objectives were to provide information on the following:

1. how the Department of Justice (DOJ) prioritized criminal prosecutions of immigration-related offenses in response to the Attorney General's 2017 and 2018 memoranda;¹
2. what Department of Homeland Security (DHS) and DOJ data from fiscal years 2014 through 2018 indicate about criminal prosecutions of immigration-related offenses; and
3. resources that DOJ, DHS, and the federal judiciary used to implement increased immigration-related prosecutions.

This report is a public version of the prior sensitive report that we provided to you in August 2019.² DHS, DOJ, and the Administrative Office of U.S. Courts (AOUSC) deemed some of the information in the prior report as Law Enforcement Sensitive or For Official Use Only, which must be protected from public disclosure. Therefore, this report omits sensitive information about specific law enforcement, prosecutorial, and judicial practices along the southwest border, including certain courtroom security and agency staffing information. Although the information provided in this report is more limited, the report addresses the same objectives as the sensitive report and uses the same methodology.

For all three objectives, we generally focused our review on the five U.S. Attorney Office (USAO) districts along the southwest border—Arizona, California Southern, New Mexico, Texas Southern, and Texas Western—

¹Department of Justice, Office of the Attorney General, *Renewed Commitment to Criminal Immigration Enforcement*, Memorandum for All Federal Prosecutors (Washington, D.C.: April 11, 2017). Department of Justice, Office of the Attorney General, *Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a)*, Memorandum for Federal Prosecutors Along the Southwest Border (Washington, D.C.: April 6, 2018).

²GAO, *IMMIGRATION ENFORCEMENT: Immigration-Related Prosecutions Increased from 2017 to 2018 in Response to U.S. Attorney General's Direction*, GAO-19-548SU (Washington, D.C.: Aug. 19, 2019).

because the Attorney General's 2017 and 2018 memoranda specifically directed officials in these districts to prioritize improper entry prosecutions. Further, approximately 93 percent of all immigration-related prosecutions from fiscal years 2014 through 2018 took place in these districts.³ USAO districts and federal judicial districts have the same boundaries. U.S. Border Patrol (Border Patrol) sectors along the border are generally not contiguous with USAO districts.

We visited three of the five districts and interviewed officials by telephone from the other two southwest border districts. Specifically, we conducted in-person site visits to Arizona in July 2018 and to California Southern and Texas Southern in October 2018. We selected these locations on the basis of several factors, including Border Patrol apprehension characteristics and DOJ prosecution practices. Specifically, to select the locations for our site visits, we considered DOJ's history of prosecuting improper entry offenses in different locations, including whether districts implemented changes to their practices for prosecuting improper entry offenses in response to the Attorney General's memoranda. For instance, we considered districts' practices for prosecuting improper entry offenses and whether those practices changed in response to the April 2017 or April 2018 memoranda. In addition, we considered the number of Border Patrol apprehensions in each USAO district and changes in the number of apprehensions from fiscal years 2014 through 2018. We also considered factors such as whether DOJ, DHS, and federal court facilities are in close proximity, among other things.

In the three districts we visited, we met with DOJ and federal court officials, including magistrate and district judges, to understand and observe their roles in the criminal prosecution process. We met with USAO, U.S. Marshals Service (USMS), Federal Defender Organizations (FDO)⁴, and federal court officials and observed federal criminal court proceedings in Tucson, Arizona; San Diego, California; McAllen, Texas; and Brownsville, Texas. We observed the criminal prosecution process from arrest to conviction and sentencing, including observations of district and magistrate court proceedings and USMS intake and holding facilities

³For this report, we define immigration-related offenses as 8 U.S.C. § 1325 (improper entry), 8 U.S.C. § 1326 (illegal reentry after removal), and 8 U.S.C. § 1324 (alien smuggling).

⁴The Defender Services program includes Federal Public Defender Organizations, whose staff are judiciary branch employees, and grant-funded Community Defender Organizations. We refer to these defender organizations collectively as FDOs.

in federal courthouses. In addition, we observed U.S. Customs and Border Protection's Border Patrol agents and Office of Field Operations (OFO) officers processing apprehended individuals and referring them for prosecution. We met with Border Patrol officials in Tucson, Arizona; McAllen, Texas; and San Diego, California. We met with OFO officials at ports of entry in Nogales, Arizona; San Ysidro, California; Hidalgo, Texas; and Brownsville, Texas. We also interviewed USAO, USMS, federal court, Border Patrol, and OFO officials who are involved in immigration prosecutions in Las Cruces, New Mexico in November 2018 (New Mexico district) and Del Rio, Texas in November 2018 (Texas Western district). Although the information we obtained from these site visits and interviews cannot be generalized to all locations along the southwest border, these interviews provided important insights and perspectives about immigration-related prosecutions and any process, volume, or resource changes in immigration-related prosecutions following the April 2017 and 2018 memoranda.

To determine how DOJ prioritized immigration-related prosecutions, we obtained and reviewed operational guidance, policies, and memoranda describing how DOJ, DHS, and the federal judiciary implement such prosecutions along the southwest border. We also reviewed documentation to identify any changes to such practices associated with implementing the Attorney General's April 2017 and the April 2018 memoranda. We reviewed training materials from the Executive Office of U.S. Attorneys (EOUSA) provided to some federal prosecutors regarding prosecuting immigration-related cases at a 2018 Border Security Coordinator conference and relevant U.S. Attorneys' Bulletins from DOJ's Journal of Federal Law and Practice, such as the July 2017 bulletin, Prosecuting Criminal Immigration Offenses, and the Justice Manual, which contains publicly available DOJ policies and procedures, including criminal prosecution procedures.⁵

In addition, we interviewed headquarters and district officials from DOJ, DHS, and the federal courts to obtain their perspectives on the Attorney General's prioritization of immigration-related prosecutions and any changes in practices as a result of the two memoranda. Specifically,

⁵Department of Justice. *Department of Justice Journal of Federal Law and Practice—Prosecuting Criminal Immigration Offenses*. (July 2017). Department of Justice. *Justice Manual*, Title 9: Criminal, Principles of Federal Prosecution – Purpose, 9-27.110 (updated February 2018).

- from DOJ, we interviewed officials from the Offices of the Attorney General and the Deputy Attorney General about the development and implementation of the April 2017 and April 2018 memoranda. We also interviewed officials from EOUSA about headquarters-level support to USAOs. We interviewed headquarters officials from USMS about how the Attorney General's prioritization of immigration offenses affected USMS operations and about available data measuring such effects.
- from DHS, we interviewed Border Patrol and OFO headquarters officials about actions CBP components took in response to the Attorney General's prioritization of immigration prosecutions and reviewed DHS, CBP, and Border Patrol memoranda and Border Patrol operational guidance related to the prioritization of immigration prosecutions. We also interviewed officials from U.S. Immigration and Customs Enforcement (ICE) about the effect of the Attorney General's prioritization on ICE's operations.
- from the Administrative Office of the U.S. Courts (AOUSC)—the federal judiciary agency that provides legislative, administrative, management, and program support to federal courts, among other functions—we interviewed officials in Washington, D.C. about the federal judiciary's roles and responsibilities related to criminal immigration-related cases, including the roles of magistrate and district judges and public defenders.

To determine what DHS and DOJ data indicate about prosecutions of immigration-related offenses, we analyzed record-level apprehension and prosecution referral data from Border Patrol's Enforcement Integrated Database/e3 (e3), as well as record-level prosecution data from EOUSA's CaseView from fiscal years 2014 through fiscal year 2018, the most recent data available at the time of our analysis.⁶

Border Patrol data. In reviewing the Border Patrol data, we determined that the majority of Border Patrol apprehensions (about 97 percent) from fiscal years 2014 through fiscal year 2018 took place along the southwest

⁶According to EOUSA officials, CaseView replaced EOUSA's Legal Information Office Network System (LIONS) data system in 2017. During the transition from LIONS to CaseView, USAO staff could enter data into either system for a number of years. EOUSA officials told us that case data entered into CaseView was directly comparable to data entered into the legacy LIONS system for the years we analyzed.

border.⁷ We excluded the small percentage of apprehensions nationwide that did not take place along the southwest border from our primary analysis, meaning that we excluded apprehensions in all districts but Arizona, California Southern, New Mexico, Texas Southern, or Texas Western from our primary analysis. We assigned each Border Patrol sector apprehension to its corresponding judicial district to maintain the judicial district as our unit of analysis for the apprehension and prosecution referrals data.⁸ For instance, if the El Paso Border Patrol sector referred a prosecution to the USAO in Las Cruces, New Mexico, we report that referral as occurring in the district of New Mexico. We matched data from e3's apprehensions module with data from e3's prosecutions module using an identifier that Border Patrol officials told us was unique to each apprehended individual to analyze those individuals that were and were not referred for criminal prosecution. Border Patrol's apprehensions and prosecution referrals include individuals who are deportable and non-deportable, as determined by Border Patrol. According to Border Patrol officials, non-deportable individuals may be U.S. citizens, foreign nationals who have a valid visa, or individuals who otherwise may not be amenable to removal from the United States. We have included non-deportable individuals in our analysis because they may be referred for prosecution for immigration-related crimes, including alien smuggling. Appendix II includes information on Border Patrol apprehensions and prosecution referrals in each judicial district from fiscal years 2014 through 2018 and information on apprehensions and prosecution referrals by nationality, including U.S. citizens. We restricted our Border Patrol data analysis to apprehensions of non-juveniles who Border Patrol did not process as members of family units.⁹ In other words, we analyzed apprehensions and prosecution referrals of single adults.

⁷We identified a small number of Border Patrol apprehension records that had the same date of apprehension and alien identification number. It is possible that these apprehension records represented one apprehended individual that Border Patrol agents processed as two apprehensions. These records comprised less than 0.1 percent of the approximately 2.1 million apprehension records we analyzed. We included these apprehension records in our analysis because Border Patrol considers them unique apprehensions and because their small number does not materially affect our analysis.

⁸We assigned this sector apprehension data to judicial districts based on the judicial district where the apprehension was or could have been referred for prosecution. In general, crimes are prosecuted in the judicial district where they are committed.

⁹Non-juveniles are defined as any individual age 18 or older on the date of their Border Patrol apprehension. In general, according to USAO and Border Patrol officials, USAOs will not accept the cases of juveniles referred for criminal prosecution unless there are aggravating circumstances.

According to Border Patrol guidance and agency officials, e3 has system checks in place that do not allow members of family units to be referred for criminal prosecution.¹⁰ Prior to April 2018, Border Patrol officials said that individuals who were to be referred for prosecution were generally processed by Border Patrol as single adults whether or not they were apprehended with their minor children. In April 2018, an update to e3 allowed Border Patrol agents to separate one or more members of a family unit from that family unit and refer those individuals for prosecution.¹¹ As stated previously, we included individuals that Border Patrol processed as single adults in our analysis of Border Patrol apprehensions.

EOUSA data. In reviewing EOUSA record-level prosecution data from fiscal years 2014 through 2018, we determined that the majority of cases filed with an immigration-related lead charge (over 90 percent of cases with an immigration-related lead charge) took place along the southwest border. We excluded prosecutions that did not take place along the southwest border from our primary analysis; we report on them in an appendix. Additionally, we determined that improper entry, illegal reentry, and alien smuggling charges comprised approximately 99 percent of immigration-related cases filed on the southwest border from fiscal years 2014 through 2018. We excluded the other charges that the Attorney General listed in the April 2017 memorandum from our primary analysis.¹² We analyzed EOUSA data based on the lead charge of the prosecution

¹⁰Members of family units must be separated from their family unit before a criminal prosecution referral can take place, according to e3 guidance and Border Patrol officials. There are a small number of individuals in Border Patrol's data who are members of family units and have indications that they were referred for criminal prosecution. Border Patrol officials said that these individuals may have been added to the family unit after their criminal prosecution. We have excluded these individuals from our analysis.

¹¹We previously reported on the April 2018 update to e3 in October 2018. See GAO, *Unaccompanied Children: Agency Efforts to Reunify Children Separated from Parents at the Border*, [GAO-19-163](#) (Washington, D.C.: October 9, 2018), 16-17.

¹²Because these charges comprised less than one percent of immigration-related prosecutions, we excluded 18 U.S.C. § 1028A (aggravated identity theft), 18 U.S.C. § 1546 (visa fraud), and 18 U.S.C. § 111 (assault against an officer). 18 U.S.C. § 1028A and 18 U.S.C. § 111 are not always immigration-related offenses. In order to identify the population of these offenses that were immigration-related, we identified the offenses that EOUSA categorized as immigration-related offenses using the program code -055. We also identified prosecutions with a lead charge of 18 U.S.C. § 1028A or 18 U.S.C. § 111 and sub-charges of improper entry, illegal reentry, or alien smuggling, which EOUSA had not identified as immigration-related using the program code -055, and included those cases in our population as well.

record. The lead charge is typically the most serious provable offense for which a defendant can be prosecuted, as determined by the USAO. We analyzed EOUSA data by fiscal year from fiscal years 2014 through 2018 to determine overall trends in immigration-related prosecutions over time. We also analyzed data by month in fiscal year 2017 and fiscal year 2018 to identify any changes in immigration-related prosecutions following the April 2017 and April 2018 memoranda. We interviewed knowledgeable USAO officials in southwest border districts level to understand how practices that they changed in response to the April 2017 and April 2018 memoranda were reflected in the data. We also analyzed the nationality of defendants based on lead charge for fiscal years 2014 through 2018, and for fiscal year 2018, to determine any changes in nationality of those prosecuted in the most recent fiscal year compared to prior fiscal years. We identified a population of defendants whose nationalities were listed as 'unknown,' in the EOUSA data. When USAOs are unable to determine the nationality of a defendant, officials entering the case data will list that nationality as 'unknown.' In appendix III, we report on the proportion of defendants with a nationality that is 'unknown' for alien smuggling cases because 'unknown' nationalities were relatively common for alien smuggling cases.

We grouped the lead charges into offense categories based on the statute of the offense. We analyzed EOUSA data at the statutory level rather than by the individual charged offenses because EOUSA officials told us that USAOs may have differing data entry practices related to the level of specificity at which they enter lead charge data into CaseView. Additionally, EOUSA directed USAOs to ensure that improper entry, illegal reentry, and alien smuggling cases are entered into EOUSA's data system on a monthly basis at the statute level in August 2017. Table 8 lists the specific offenses that we combined under their shared statute for our analysis.

Table 8: Grouped Offenses, as Determined by GAO’s Analysis of the Executive Office for U.S. Attorneys (EOUSA) and U.S. Border Patrol (Border Patrol) Data

Grouped offenses ^a	Group includes
Improper Entry	8 U.S.C. § 1325(a): improper time or place; avoidance of examination or inspection; misrepresentation and concealment of facts 8 U.S.C. § 1325(c): marriage fraud 8 U.S.C. § 1325(d): immigration-related entrepreneurship fraud
Illegal Reentry	8 U.S.C. § 1326(a): reentry following deportation, removal, or denial of entry 8 U.S.C. § 1326(b): criminal penalties for reentry of certain removed aliens 8 U.S.C. § 1326(c): reentry of alien deported prior to completion of term of imprisonment 8 U.S.C. § 1326(d): limitation on collateral attack on underlying deportation order
Alien Smuggling	8 U.S.C. § 1324: Bringing in and harboring certain aliens

Source: GAO. | GAO-20-172

^aWe categorized immigration-related offenses at the statute level. For instance, rather than reporting specifically on 8 U.S.C. § 1325(a), we are reporting on all cases filed with a lead charge of 8 U.S.C. § 1325, generally. This is because USAOs along the southwest border record improper entry to varying levels of specificity. For instance, in some locations USAOs record improper entry at the statute level. According to EOUSA officials, most improper entry charges that USAOs along the southwest border record at the statute level indicate a specific charge of 8 U.S.C. §1325(a).

We assessed the reliability of Border Patrol and EOUSA data by testing for missing data and obvious errors, reviewing related documentation such as data dictionaries and guidance for entering data, and interviewing knowledgeable agency officials both at the headquarters level and in the three districts that we visited. We determined that the Border Patrol and the EOUSA data are sufficiently reliable for reporting on immigration-related prosecutions and individuals that Border Patrol apprehended and referred for criminal prosecution.

To determine the resources used to implement increased immigration-related prosecutions, we obtained and reviewed DOJ, DHS, and federal judiciary documentation focused on any existing resources that agencies realigned to implement or support increased immigration prosecutions, as well as expenditures or additional personnel used to support the implementation of increased immigration-related prosecutions. For example, we reviewed memoranda of understanding between EOUSA and the Department of Defense (DOD) regarding DOD detailing attorneys to EOUSA to prosecute immigration-related offenses, as well as USMS intergovernmental agreements used to expand detention space. We also reviewed data from USMS on the unique prisoners received, average daily prisoner population, and total prisoner appearances in court to determine any changes in the volume of USMS prisoners from fiscal year

2014 through fiscal year 2018.¹³ We reviewed documentation from southwest Border Patrol sectors specifying the number of Border Patrol agents that those sectors detailed to USMS and USAO locations, as well as any changes in the number and duration of agents detailed to those locations following the April 2017 and April 2018 memoranda.

To specifically identify expenditures or personnel for implementing increased immigration-related prosecutions, we reviewed agency documentation, such as documentation from expenditure tracking systems from USMS and Border Patrol. We interviewed agency budget and program officials from USMS' Offices of Budget Formulation, Forecasting and Analysis, and General Counsel; EOUSA's Office of Resource Management and Planning; AOUSC's Office of the Financial Liaison and Analysis Staff; Border Patrol's Office of Budget Execution; OFO's Office of Budget Formulation; CBP's Budget Office; and CBP's Office of Chief Counsel.

In instances where there was no explicit distinction between expenditures or personnel for specifically supporting immigration-related prosecutions and expenditures or personnel used to support other prosecutions, we identified the general account within which immigration-related prosecution costs would be included, and noted that those expenditures include costs for other prosecutions as well. In addition, where agencies identified that they used personnel resources to implement immigration-related prosecutions, we collected related documentation, such as expenditures for temporary details from other parts of the United States to the southwest border, as available, and spoke with district officials by telephone and during our site visits to better understand the use of these personnel resources. We also reviewed Congressional Budget Justifications for fiscal year 2020 to identify expenditures that agencies requested from Congress to support increased immigration-related prosecutions.

¹³According to USMS officials, the prisoners received number indicates the number of prisoners who appear in court one or more times and is counted based on a prisoner's first court appearance for a particular charged offense. This number can include prisoners who were technically never remanded into USMS custody, such as prisoners who went through improper entry prosecutions that lasted for one day or less, as well as prisoners in USMS custody. The production number accounts for every appearance a prisoner makes in a courtroom. According to USMS, this is a measure of how busy a particular USMS court unit is during a given time period. The average daily prisoner rate accounts for the average number of prisoners in USMS custody per day. The rate is generally associated with the number of prisoners USMS for which USMS is providing housing or bed space on a given day.

We conducted this performance audit from May 2018 to August 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Enclosures on U.S. Southwest Border Districts

This appendix provides additional detail on and characteristics of immigration-related prosecutions in the five U.S. southwest border districts: Arizona, California Southern, New Mexico, Texas Southern, and Texas Western. Each enclosure contains the following information:

Description of the district. In this section, we provide a narrative description of the district, including prosecution practices in the district for improper entry, illegal reentry, and alien smuggling cases. We also provide information on the location of the federal courts in the district, U.S. Border Patrol (Border Patrol) sectors in the district, and the federal court circuit in which the district falls.¹ Descriptions of the district reflect practices that were in place as of the date we observed prosecution practices or interviewed knowledgeable officials in the district, which generally ranged from July through November 2018.

Cases filed. In this table, we show cases filed by the U.S. Attorney's Office in the district with a lead charge of alien smuggling, improper entry, or illegal reentry from fiscal years 2014 through 2018. The lead charge is typically the most serious of the charged offenses at the time the U.S. Attorney's Office files the case, according to Executive Office for U.S. Attorneys (EOUSA) officials. Table 9 describes these offenses.

¹In general, there are U.S. Attorney office locations that correspond with the federal court locations in each district.

Table 9: Description of Alien Smuggling, Improper Entry, and Illegal Reentry

Term	Statute	High-level description of offense(s)	Misdemeanor or felony offense ^a
Alien smuggling	8 U.S.C. § 1324	bringing in and harboring certain aliens, including the unlawful transportation of certain aliens	Felony
Improper entry by alien	8 U.S.C. § 1325	(a) illegal/improper entry into the United States (c) marriage fraud ^b (d) immigration-related entrepreneurship fraud ^b	First offense for 8 U.S.C. § 1325(a) is a misdemeanor
Illegal reentry	8 U.S.C. § 1326	(a) illegal reentry of removed alien (b) illegal reentry of certain removed aliens with specific criminal history, such as a prior conviction for an aggravated felony ^c	Felony

Source: GAO. | GAO-20-172

Note: The Immigration and Nationality Act defines an alien as a person who is not a citizen or national of the United States. See 8 U.S.C. § 1101(a)(3), (a)(22).

^aA misdemeanor is an offense punishable by a maximum term of imprisonment of less than one year. A felony is an offense punishable by a term of imprisonment of more than one year.

^bSection 1325(c) establishes criminal penalties for knowingly entering into a marriage for the purpose of evading any provision of the immigration laws. Subsection (d) establishes criminal penalties for knowingly establishing a commercial enterprise for the purpose of evading any provision of the immigration laws

^cThe term “aggravated felony” is defined in the Immigration and Nationality Act to include, among other offenses, murder, rape, or sexual abuse of a minor, illicit trafficking of a controlled substance, and a crime of violence for which the term of imprisonment is at least one year. See 8 U.S.C. § 1101(a)(43).

Dispositions. In this table, we show the dispositions of those cases with a lead charge of alien smuggling, improper entry, or illegal reentry from fiscal years 2014 through 2018, as of September 30, 2018, based on the year the case was filed by the U.S. Attorney’s Office. We have included a “pending” column for those cases that did not have a disposition, as of September 30, 2018.

Apprehensions and prosecution referrals. In this table, we show prosecution referrals and declinations for those single adults that Border Patrol apprehended from fiscal years 2014 through 2018. In particular, this table includes single adults that Border Patrol apprehended and processed as an individual apprehension, not as a member of a family unit. The U.S. Attorney’s Office decides whether to accept or decline each case that Border Patrol refers for prosecution. We show those cases (each apprehended individual is one case) that Border Patrol referred to the U.S. Attorney’s Office for prosecution and the number of such cases that the U.S. Attorney’s Office declined to prosecute. Individuals whose immigration-related criminal cases are declined by a U.S. Attorney’s Office may be processed in administrative removal proceedings.

Nationality and prosecution referrals. In this table, we show the number of prosecution referrals from Border Patrol to U.S. Attorneys' Offices, by country of nationality. These include both referrals that U.S. Attorneys' Offices accepted and those that U.S. Attorneys' Offices declined. We also show, by country of nationality, the percent of individuals who were apprehended and referred for prosecution compared to all those apprehended. For example, if 100 Mexican nationals were apprehended and 50 were referred for prosecution, 50 percent of Mexican nationals apprehended were referred for prosecution.

Cases filed by month. In this figure, we show the cases filed with lead charges of alien smuggling, improper entry, or illegal reentry each month from October 2016 through September 2018. We also show the timing of the Attorney General's April 2017 memorandum, which prioritized immigration enforcement, and the Attorney General's April 2018 memorandum, which instructed prosecutors on the southwest border to accept all improper entry referrals, to the extent practicable.²

²Department of Justice, Office of the Attorney General, *Renewed Commitment to Criminal Immigration Enforcement*, Memorandum for All Federal Prosecutors (Washington, D.C.: April 11, 2017). Department of Justice, Office of the Attorney General, *Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a)*, Memorandum for Federal Prosecutors Along the Southwest Border (Washington, D.C.: April 6, 2018).

U.S. Courts: Phoenix, Tucson, Yuma, and Flagstaff

Border Patrol Sectors: Tucson and Yuma

Federal Circuit: Ninth

One-day improper entry prosecutions: Yes

Volume constraints: Yes; generally 75 improper entry cases per day in Tucson and 30 in Yuma.

Improper entry (8 U.S.C. § 1325): One-day prosecutions began in Tucson in 2008 and were known as “Operation Streamline.” A U.S. Customs and Border Protection Special Assistant U.S. Attorney represents the government in court each day in Tucson. There are a maximum of six defendants per public defender in court.

Each day, Border Patrol refers approximately 20 more cases for one-day prosecution in Tucson than the court will allow; the U.S. Attorney’s Office declines these referrals.

Illegal reentry (8 U.S.C. § 1326): In Tucson, many people charged with illegal reentry are ultimately convicted of the lesser crime of improper entry. Specifically, although there is sufficient evidence to charge the defendant with illegal reentry, the prosecutor offers the defendant a plea deal for the lesser improper entry charge. According to officials in the Arizona U.S. Attorney’s Office, these cases are typically filed with a lead charge of illegal reentry.

Alien smuggling (8 U.S.C. § 1324): Alien smuggling cases are resource-intensive, according to officials in the Arizona U.S. Attorney’s office, due to their evidentiary requirements, including depositions from material witnesses.

Note: These were generally Arizona’s prosecution practices as of July 2018.

District: Arizona

Table 10: Cases Filed by Arizona U.S. Attorney’s Office, by Lead Charge, Fiscal Years 2014-2018

Year case filed	Alien smuggling	Improper entry	Illegal reentry
2014	813	4,326	19,071
2015	802	1,592	16,190
2016	642	827	12,406
2017	539	2,959	11,796
2018	787	6,606	10,603

Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

Table 11: Dispositions of Selected Immigration-related Cases Filed by Arizona U.S. Attorney’s Office, by Lead Charge, Fiscal Years 2014-2018, as of September 2018 (percent)

<i>Alien smuggling</i>					
Year case filed	Guilty	Dismissed	Not guilty	Other ^a	Pending ^b
2014	91	5	0	3	1
2015	89	7	0	2	2
2016	90	7	0	1	2
2017	86	5	0	3	6
2018	47	4	0	2	47

<i>Improper entry</i>					
Year case filed	Guilty	Dismissed	Not guilty	Other ^a	Pending ^b
2014	100	0	0	0	0
2015	99	1	0	0	0
2016	99	1	0	0	0
2017	91	8	0	0	0
2018	91	8	0	0	1

<i>Illegal reentry</i>					
Year case filed	Guilty	Dismissed	Not guilty	Other ^a	Pending ^b
2014	97	3	0	0	0
2015	96	4	0	0	0
2016	96	4	0	0	0
2017	95	4	0	0	0
2018	78	4	0	0	18

Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

Note: Due to rounding, categories with 0 percent may not actually have zero occurrences. Percentages may not add to 100 due to rounding.

^aOther dispositions include cases which ended because: the defendant was a juvenile, the charge was included in another case, the case was filed again, or the case was transferred to another district, among other reasons.

^bPending cases were not complete as of the end of fiscal year 2018. For example, many of the alien smuggling and illegal reentry cases filed in fiscal year 2018 were pending as of the end of that fiscal year.

Table 12: U.S Border Patrol Apprehensions and Referrals for Prosecution in Arizona, Fiscal Years 2014-2018

Year	Single adult apprehensions	Single adults referred for criminal prosecution	Percent of single adults referred for criminal prosecution	Single adult referrals for prosecution declined by U.S. Attorney	Percent of single adult prosecution referrals declined
2014	85,212	26,202	31	954	4
2015	62,307	19,249	31	970	5
2016	63,799	16,593	26	1,420	9
2017	40,364	15,496	38	1,294	8
2018	53,043	23,910	45	3,083	13

Source: GAO analysis of U.S. Border Patrol data. | GAO-20-172

Note: For this report, single adults are those adults age 18 or older at the time of their apprehension who Border Patrol did not process as a member of a family unit. Border Patrol apprehensions include deportable and non-deportable single adults, as determined by Border Patrol; both are included in this table because, according to Border Patrol officials, non-deportable single adults, including U.S. citizens, may be apprehended and referred to the U.S. Attorney's Office for criminal prosecution.

Table 13: Single Adults U.S. Border Patrol Referred for Prosecution in Arizona, by Country of Nationality, Fiscal Years 2014-2018

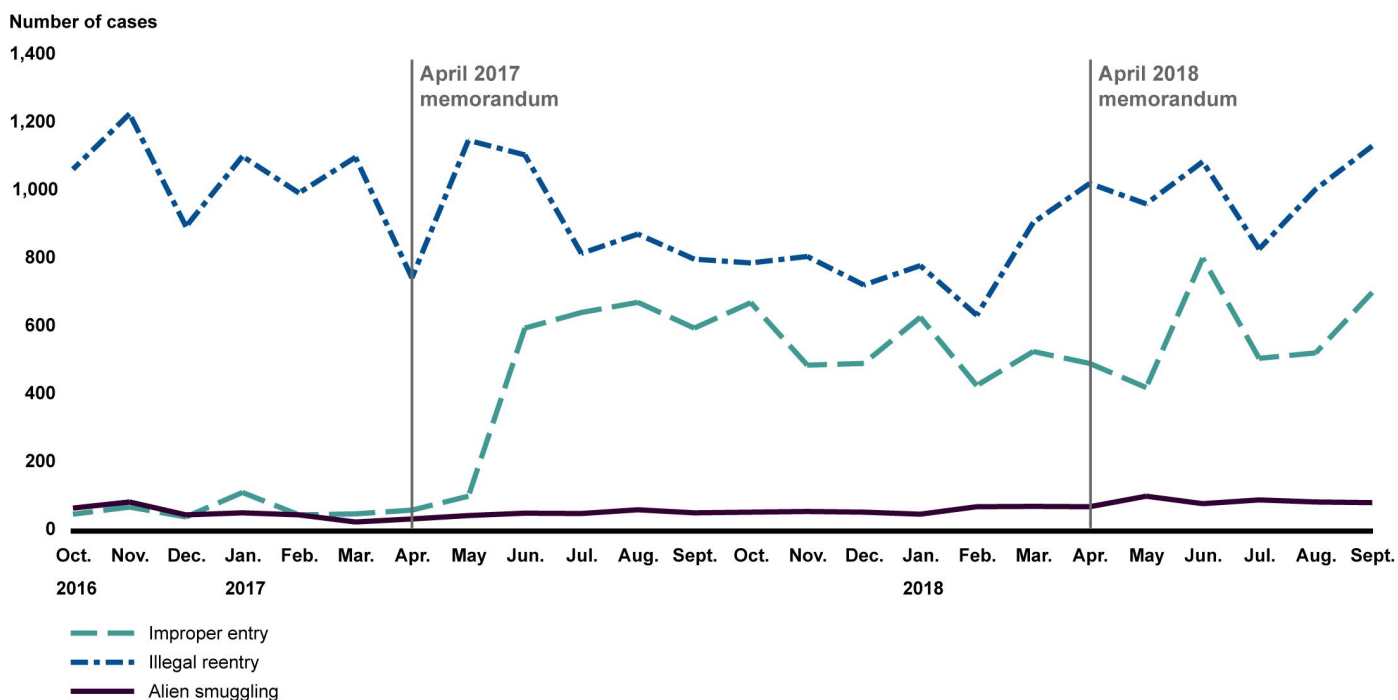
<i>Number of prosecution referrals</i>						
Year	Mexico	Guatemala	Honduras	El Salvador	United States	Other
2014	21,820	1,619	1,068	276	1,064	355
2015	16,079	1,390	527	272	910	71
2016	12,820	1,497	923	231	1,018	104
2017	10,974	2,265	1,100	265	791	101
2018	14,338	5,473	1,766	378	1,150	805

<i>Percent of those apprehended referred for prosecution</i>						
Year	Mexico	Guatemala	Honduras	El Salvador	United States	Other
2014	32	20	43	27	32	16
2015	33	22	39	26	38	3
2016	28	17	34	18	44	5
2017	41	33	48	31	28	16
2018	48	43	52	47	30	38

Source: GAO analysis of U.S. Border Patrol data. | GAO-20-172

Note: For this report, single adults are those adults age 18 or older at the time of their apprehension who Border Patrol did not process as a member of a family unit. Border Patrol apprehensions include deportable and non-deportable single adults, as determined by Border Patrol; both are included in this table because, according to Border Patrol officials, non-deportable single adults, including U.S. citizens, may be apprehended and referred to the U.S. Attorney's Office for criminal prosecution.

Figure 8: Cases Filed Monthly by Arizona U.S. Attorney’s Office, by Lead Charge, Fiscal Years 2017-2018



Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

Data table for Figure 8: Cases Filed Monthly by Arizona U.S. Attorney’s Office, by Lead Charge, Fiscal Years 2017-2018

Date	Alien smuggling	Improper entry	Illegal reentry
Oct-16	60	42	1058
Nov-16	78	63	1221
Dec-16	40	34	889
Jan-17	46	106	1096
Feb-17	40	40	988
Mar-17	19	43	1093
Apr-17	28	54	738
May-17	38	95	1143
Jun-17	45	590	1100
Jul-17	44	636	810
Aug-17	55	666	867
Sep-17	46	590	793
Oct-17	48	665	782
Nov-17	50	481	801
Dec-17	48	486	717

**Appendix II: Enclosures on U.S. Southwest
Border Districts**

Date	Alien smuggling	Improper entry	Illegal reentry
Jan-18	42	622	774
Feb-18	64	421	628
Mar-18	65	521	901
Apr-18	64	486	1016
May-18	95	415	956
Jun-18	73	796	1080
Jul-18	84	501	823
Aug-18	78	517	999
Sep-18	76	695	1126

Note: The memoranda referenced in this figure are: Department of Justice, Office of the Attorney General, Renewed Commitment to Criminal Immigration Enforcement, Memorandum for All Federal Prosecutors (Washington, D.C.: April 11, 2017) (April 2017 memorandum) and Department of Justice, Office of the Attorney General, Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a), Memorandum for Federal Prosecutors Along the Southwest Border (Washington, D.C.: April 6, 2018) (April 2018 memorandum). The lead charge is typically the most serious of the charged offenses at the time the U.S. Attorney's Office files the case, according to Executive Office for U.S. Attorneys officials.

U.S. Courts: San Diego and El Centro

Border Patrol Sectors: San Diego, El Centro, and Yuma

Federal Circuit: Ninth

One-day improper entry prosecutions: No

Volume constraints: Yes; daily generally 40 to 52 improper entry initial appearances in San Diego and 20 in El Centro.

Per local court rules, 1) all cases must be presented to a magistrate judge the next court day after an arrest and 2) all defendants must have a tuberculosis screening before their initial appearance in court.

Improper entry (8 U.S.C. § 1325): The U.S. Attorney's Office in San Diego began accepting cases for improper entry for individuals with no criminal history in July 2018. In general, improper entry prosecutions take place over approximately 5 days, with an initial appearance on the first day and a status/plea hearing several days later. There are a maximum of 4 defendants per public defender in court for each day's improper entry docket in San Diego. In 2018, some magistrate judges granted bond to some improper entry defendants, who were then removed by the Department of Homeland Security before their second hearing. These cases were generally dismissed.

Illegal reentry (8 U.S.C. § 1326): The U.S. Attorney accepts most illegal reentry cases that Border Patrol refers.

Alien smuggling (8 U.S.C. § 1324): According to U.S. Attorney officials, alien smuggling cases are labor intensive and require significant documentation.

Note: These were generally California Southern's prosecution practices as of October 2018.

District: California Southern

Table 14: Cases Filed by California Southern U.S. Attorney's Office, by Lead Charge, Fiscal Years 2014-2018

Year case filed	Alien smuggling	Improper entry	Illegal reentry
2014	514	216	1,935
2015	541	186	1,653
2016	648	640	1,193
2017	1,085	577	1,275
2018	1,013	5,426	1,514

Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

Table 15: Dispositions of Selected Immigration-related Cases Filed by California Southern U.S. Attorney's Office, by Lead Charge, Fiscal Years 2014-2018, as of September 2018 (percent)

Year case filed	Alien smuggling				
	Guilty	Dismissed	Not guilty	Other ^a	Pending ^b
2014	59	36	0	3	2
2015	63	31	0	2	3
2016	60	30	0	2	8
2017	67	17	0	1	16
2018	38	6	0	0	55

Year case filed	Improper entry				
	Guilty	Dismissed	Not guilty	Other ^a	Pending ^b
2014	97	3	0	0	0
2015	94	4	0	1	1
2016	99	1	0	0	0
2017	98	1	0	0	1
2018	66	12	0	0	22

Year case filed	Illegal reentry				
	Guilty	Dismissed	Not guilty	Other ^a	Pending ^b
2014	90	6	0	0	3
2015	92	5	0	0	2
2016	77	8	0	0	15
2017	83	6	0	0	11
2018	45	4	0	0	51

Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

Note: Due to rounding, categories with 0 percent may not actually have zero occurrences. Percentages may not add to 100 due to rounding.

^aOther dispositions include cases which ended because: the defendant was a juvenile, the charge was included in another case, the case was filed again, or the case was transferred to another district, among other reasons.

^bPending cases were not complete as of the end of fiscal year 2018. For example, many of the alien smuggling and illegal reentry cases filed in fiscal year 2018 were pending as of the end of that fiscal year.

Table 16: U.S. Border Patrol Apprehensions and Referrals for Prosecution in California Southern, Fiscal Years 2014-2018

Year	Single adult apprehensions	Single adults referred for criminal prosecution	Percent of single adults referred for criminal prosecution	Single adult referrals for prosecution declined by U.S. Attorney	Percent of single adult prosecution referrals declined
2014	45,087	2,413	5	199	8
2015	39,177	2,371	6	377	16
2016	47,998	2,384	5	229	10
2017	41,112	2,497	6	184	7
2018	60,005	8,379	14	1,346	16

Source: GAO analysis of U.S. Border Patrol data. | GAO-20-172

Note: For this report, single adults are those adults age 18 or older at the time of their apprehension who Border Patrol did not process as a member of a family unit. Border Patrol apprehensions include deportable and non-deportable single adults, as determined by Border Patrol; both are included in this table because, according to Border Patrol officials, non-deportable single adults, including U.S. citizens, may be apprehended and referred to the U.S. Attorney's Office for criminal prosecution.

Table 17: Single Adults U.S. Border Patrol Referred for Prosecution in California Southern, by Country of Nationality, Fiscal Years 2014-2018

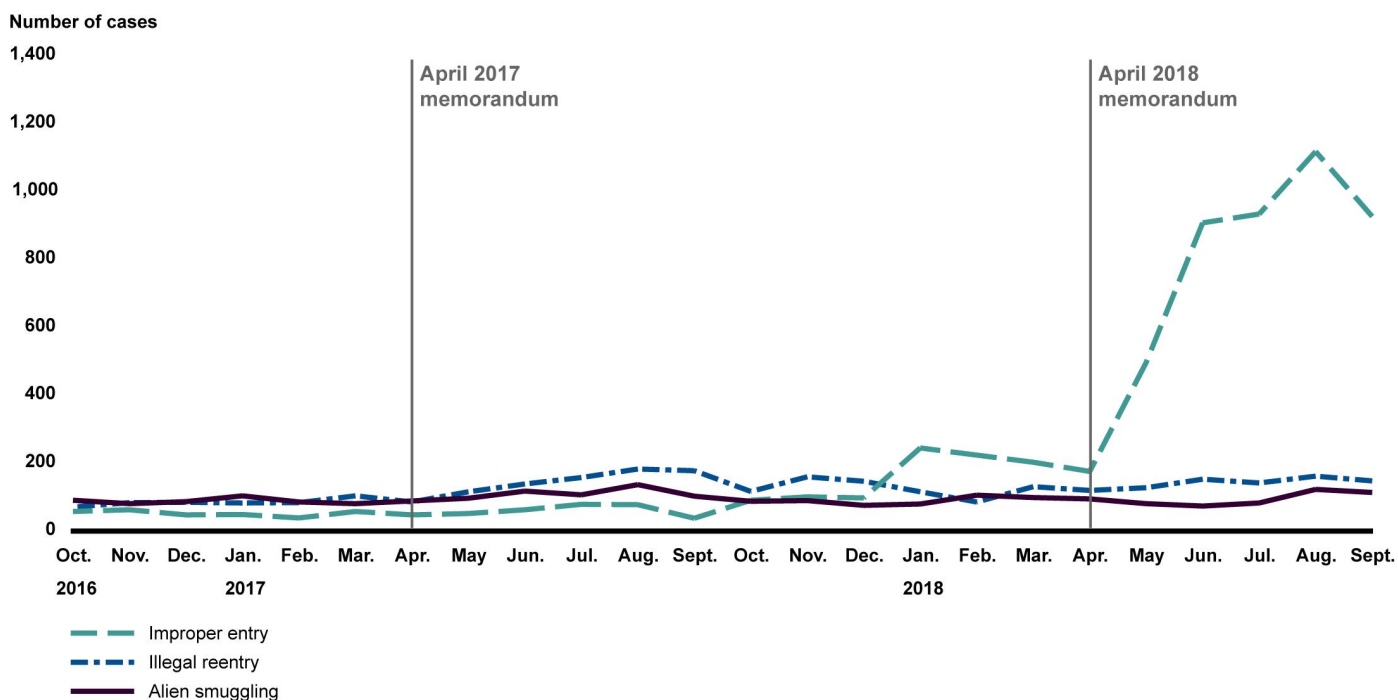
<i>Number of prosecution referrals</i>						
Year	Mexico	Guatemala	Honduras	El Salvador	United States	Other
2014	1,923	43	48	37	345	17
2015	1,800	19	34	31	474	13
2016	1,798	28	38	45	460	15
2017	1,754	46	61	40	571	25
2018	6,985	237	261	114	623	159

<i>Percent of those apprehended referred for prosecution</i>						
Year	Mexico	Guatemala	Honduras	El Salvador	United States	Other
2014	5	5	5	6	11	4
2015	5	3	8	9	17	2
2016	5	3	5	9	18	0
2017	6	4	7	6	20	1
2018	16	14	17	18	18	2

Source: GAO analysis of U.S. Border Patrol data. | GAO-20-172

Note: For this report, single adults are those adults age 18 or older at the time of their apprehension who Border Patrol did not process as a member of a family unit. Border Patrol apprehensions include deportable and non-deportable single adults, as determined by Border Patrol; both are included in this table because, according to Border Patrol officials, non-deportable single adults, including U.S. citizens, may be apprehended and referred to the U.S. Attorney's Office for criminal prosecution. Due to rounding, categories with 0 percent may not actually have zero occurrences.

Figure 9: Cases Filed Monthly by California Southern U.S. Attorney's Office, by Lead Charge, Fiscal Years 2017-2018



Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

Data table for Figure 9: Cases Filed Monthly by California Southern U.S. Attorney's Office, by Lead Charge, Fiscal Years 2017-2018

Date	Alien smuggling	Improper entry	Illegal reentry
Oct-16	83	50	63
Nov-16	73	55	76
Dec-16	79	40	77
Jan-17	96	41	75
Feb-17	78	31	76
Mar-17	73	50	96
Apr-17	81	40	78
May-17	89	44	108
Jun-17	110	55	131
Jul-17	99	71	150
Aug-17	129	70	175
Sep-17	95	30	170
Oct-17	80	83	109

**Appendix II: Enclosures on U.S. Southwest
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Date	Alien smuggling	Improper entry	Illegal reentry
Nov-17	82	93	152
Dec-17	68	90	139
Jan-18	72	237	108
Feb-18	98	216	78
Mar-18	91	195	123
Apr-18	87	168	112
May-18	73	489	120
Jun-18	66	900	145
Jul-18	75	926	134
Aug-18	115	1110	154
Sep-18	106	919	140

Note: The memoranda referenced in this figure are: Department of Justice, Office of the Attorney General, Renewed Commitment to Criminal Immigration Enforcement, Memorandum for All Federal Prosecutors (Washington, D.C.: April 11, 2017) (April 2017 memorandum) and Department of Justice, Office of the Attorney General, Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a), Memorandum for Federal Prosecutors Along the Southwest Border (Washington, D.C.: April 6, 2018) (April 2018 memorandum). The lead charge is typically the most serious of the charged offenses at the time the U.S. Attorney's Office files the case, according to Executive Office for U.S. Attorneys officials.

U.S. Courts: Albuquerque, Las Cruces, Santa Fe, and Roswell

Border Patrol Sector(s): El Paso

Federal Circuit: Tenth

One-day improper entry prosecutions: No

Volume constraints: No

Improper entry (8 U.S.C. § 1325): Las Cruces (New Mexico's border court) resumed improper entry prosecutions for individuals with no criminal history in June 2017 after generally not prioritizing them from 2014 through 2017. In general, improper entry defendants make an initial appearance, are remanded to U.S. Marshals custody, and return to court 3 to 4 days later. At the second hearing, most plead guilty and are sentenced.

U.S. Attorney's Office (USAO) officials told us that they had capacity to prosecute all improper entry referrals, as of November 2018.

Illegal reentry (8 U.S.C. § 1326): In Las Cruces, as of June 2017, prosecutors told us they generally charged any person with a prior history of removal from United States with felony illegal reentry. Las Cruces has a streamlined process for illegal reentry defendants with no prior felony convictions, which can be completed in as few as 20 days, though many take 20-40 days. According to USAO officials, about 80 percent of illegal reentry defendants go through the streamlined process and defendants are often convicted and sentenced to time served.

Alien smuggling (8 U.S.C. § 1324): Witnesses in alien smuggling cases are generally not detained in New Mexico.

District: New Mexico

Table 18: Cases Filed by New Mexico U.S. Attorney's Office, by Lead Charge, Fiscal Years 2014-2018

Year case filed	Alien smuggling	Improper entry	Illegal reentry
2014	87	99	3,260
2015	115	112	3,570
2016	166	148	3,916
2017	181	1,486	2,699
2018	213	4,573	3,295

Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

Table 19: Dispositions of Selected Immigration-related Cases Filed by New Mexico U.S. Attorney's Office, by Lead Charge, Fiscal Years 2014-2018, as of September 2018 (percent)

Year case filed	Alien smuggling				
	Guilty	Dismissed	Not guilty	Other ^a	Pending ^b
2014	76	16	0	5	3
2015	86	6	0	6	2
2016	83	5	0	11	1
2017	79	7	0	9	6
2018	19	4	0	6	70

Year case filed	Improper entry				
	Guilty	Dismissed	Not guilty	Other ^a	Pending ^b
2014	96	1	0	1	2
2015	95	5	0	0	0
2016	94	6	0	0	0
2017	98	1	0	0	1
2018	96	0	0	0	3

Year case filed	Illegal reentry				
	Guilty	Dismissed	Not guilty	Other ^a	Pending ^b
2014	99	1	0	0	0
2015	99	1	0	0	0
2016	98	1	0	0	0
2017	98	1	0	0	1
2018	74	1	0	0	25

Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

Note: Due to rounding, categories with 0 percent may not actually have zero occurrences. Percentages may not add to 100 due to rounding.

^aOther dispositions include cases which ended because: the defendant was a juvenile, the charge was included in another case, the case was filed again, or the case was transferred to another district, among other reasons.

^bPending cases were not complete as of the end of fiscal year 2018. For example, many of the alien smuggling and illegal reentry cases filed in fiscal year 2018 were pending as of the end of that fiscal year.

Table 20: U.S. Border Patrol Apprehensions and Referrals for Prosecution in New Mexico, Fiscal Years 2014-2018

Year	Single adult apprehensions	Single adults referred for criminal prosecution	Percent of single adults referred for criminal prosecution	Single adult referrals for prosecution declined by U.S. Attorney	Percent of single adult prosecution referrals declined
2014	8,789	3,249	37	6	0
2015	10,110	3,695	37	2	0
2016	14,359	4,071	28	4	0
2017	10,820	4,230	39	5	0
2018	9,769	7,785	80	5	0

Source: GAO analysis of U.S. Border Patrol data. | GAO-20-172

Note: For this report, single adults are those adults age 18 or older at the time of their apprehension who Border Patrol did not process as a member of a family unit. Border Patrol apprehensions include deportable and non-deportable single adults, as determined by Border Patrol; both are included in this table because, according to Border Patrol officials, non-deportable single adults, including U.S. citizens, may be apprehended and referred to the U.S. Attorney's Office for criminal prosecution. Due to rounding, categories with 0 percent may not actually have zero occurrences.

Table 21: Single Adults U.S. Border Patrol Referred for Prosecution in New Mexico, by Country of Nationality, Fiscal Years 2014-2018

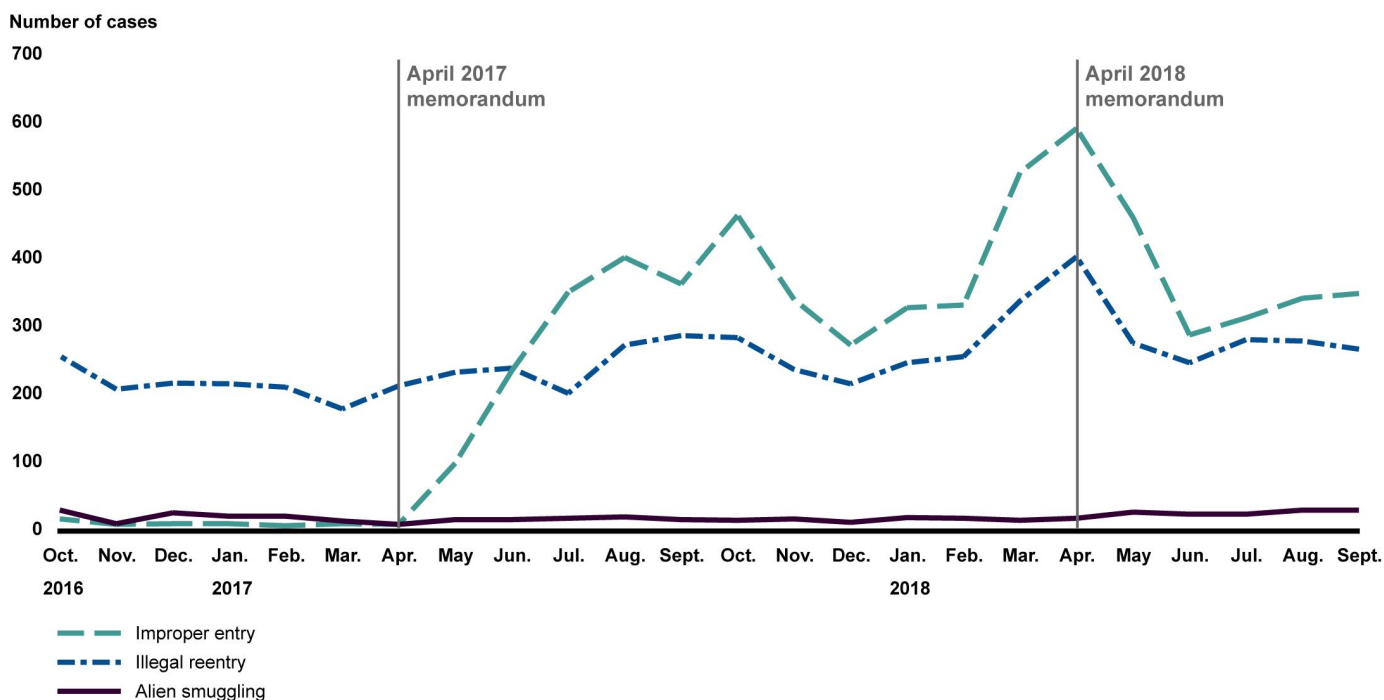
<i>Number of prosecution referrals</i>						
Year	Mexico	Guatemala	Honduras	El Salvador	United States	Other
2014	2,871	211	67	37	35	28
2015	3,215	244	60	71	69	36
2016	3,435	318	59	105	79	75
2017	3,244	490	153	117	112	114
2018	5,368	1,350	355	316	140	256

<i>Percent of those apprehended referred for prosecution</i>						
Year	Mexico	Guatemala	Honduras	El Salvador	United States	Other
2014	43	35	35	23	4	8
2015	42	30	33	26	8	11
2016	34	18	21	20	9	11
2017	45	38	48	31	11	19
2018	89	82	89	89	14	69

Source: GAO analysis of U.S. Border Patrol data. | GAO-20-172

Note: For this report, single adults are those adults age 18 or older at the time of their apprehension who Border Patrol did not process as a member of a family unit. Border Patrol apprehensions include deportable and non-deportable single adults, as determined by Border Patrol; both are included in this table because, according to Border Patrol officials, non-deportable single adults, including U.S. citizens, may be apprehended and referred to the U.S. Attorney's Office for criminal prosecution.

Figure 10: Cases Filed Monthly by New Mexico U.S. Attorney's Office, by Lead Charge, Fiscal Years 2017-2018



Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

Data table for Figure 10: Cases Filed Monthly by New Mexico U.S. Attorney's Office, by Lead Charge, Fiscal Years 2017-2018

Date	Alien smuggling	Improper entry	Illegal reentry
Oct-16	27	14	254
Nov-16	7	6	205
Dec-16	23	7	214
Jan-17	18	7	213
Feb-17	18	4	208
Mar-17	11	7	176
Apr-17	6	6	210
May-17	13	96	230
Jun-17	13	232	236
Jul-17	15	348	199
Aug-17	17	399	270
Sep-17	13	360	284
Oct-17	12	461	281

**Appendix II: Enclosures on U.S. Southwest
Border Districts**

Date	Alien smuggling	Improper entry	Illegal reentry
Nov-17	14	337	234
Dec-17	9	270	213
Jan-18	16	325	244
Feb-18	15	329	253
Mar-18	12	524	335
Apr-18	15	589	400
May-18	24	458	273
Jun-18	21	285	244
Jul-18	21	310	278
Aug-18	27	339	276
Sep-18	27	346	264

Note: The memoranda referenced in this figure are: Department of Justice, Office of the Attorney General, Renewed Commitment to Criminal Immigration Enforcement, Memorandum for All Federal Prosecutors (Washington, D.C.: April 11, 2017) (April 2017 memorandum) and Department of Justice, Office of the Attorney General, Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a), Memorandum for Federal Prosecutors Along the Southwest Border (Washington, D.C.: April 6, 2018) (April 2018 memorandum). The lead charge is typically the most serious of the charged offenses at the time the U.S. Attorney's Office files the case, according to Executive Office for U.S. Attorneys officials.

U.S. Courts: Houston, Brownsville, Corpus Christi, Galveston, Laredo, McAllen, and Victoria

Border Patrol Sectors: Rio Grande Valley, Laredo

Federal Circuit: Fifth

One-day improper entry prosecutions: Yes

Volume constraints: No

Improper entry (8 U.S.C. § 1325): The majority of one-day prosecutions take place in McAllen and Laredo. According to U.S. Attorney's Office (USAO) officials in McAllen, prior to April 2018, McAllen accepted about 40 improper entry cases per day and generally Border Patrol would not refer cases unless the defendant had a criminal or immigration history. Beginning in May 2018, McAllen accepted all referred improper entry cases and sometimes prosecuted 200 improper entry cases per day in two court sessions. There is one public defender for all defendants in improper entry proceedings each day in McAllen. All defendants meet with a Federal Public Defender prior to their court hearing. A defendant may be convicted of improper entry 5 or more times in McAllen.

Illegal reentry (8 U.S.C. § 1326): In Texas Southern, the USAO generally declines illegal reentry referrals without a prior felony conviction. This practice has not changed in 2017 or 2018.

Alien smuggling (8 U.S.C. § 1324): In general, alien smuggling cases with sufficient evidence are accepted for prosecution; prior to 2017, the USAO generally declined referrals involving fewer than 6 smuggled aliens.

Note: These were generally Texas Southern's prosecution practices as of October 2018.

District: Texas Southern

Table 22: Cases Filed by Texas Southern U.S. Attorney's Office, by Lead Charge, Fiscal Years 2014-2018

Year case filed	Alien smuggling	Improper entry	Illegal reentry
2014	1,198	25,049	3,685
2015	1,192	21,654	3,882
2016	1,491	19,038	3,620
2017	1,080	10,774	3,160
2018	1,290	30,129	3,777

Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

Table 23: Dispositions of Selected Immigration-related Cases Filed by Texas Southern U.S. Attorney's Office, by Lead Charge, Fiscal Years 2014-2018, as of September 2018 (percent)

<i>Alien smuggling</i>					
Year case filed	Guilty	Dismissed	Not guilty	Other ^a	Pending ^b
2014	89	8	0	1	1
2015	89	8	0	1	1
2016	90	6	0	1	3
2017	87	7	0	1	5
2018	34	6	0	0	59

<i>Improper entry</i>					
Year case filed	Guilty	Dismissed	Not guilty	Other ^a	Pending ^b
2014	99	0	0	0	1
2015	100	0	0	0	0
2016	99	1	0	0	0
2017	100	0	0	0	0
2018	98	1	0	0	1

<i>Illegal reentry</i>					
Year case filed	Guilty	Dismissed	Not guilty	Other ^a	Pending ^b
2014	92	8	0	0	0
2015	95	4	0	0	1
2016	96	3	0	0	1
2017	96	3	0	0	1
2018	51	2	0	0	46

Source: GAO analysis of Executive Office for U. S. Attorneys data. | GAO-20-172

Note: Due to rounding, categories with 0 percent may not actually have zero occurrences. Percentages may not add to 100 due to rounding.

^aOther dispositions include cases which ended because: the defendant was a juvenile, the charge was included in another case, the case was filed again, or the case was transferred to another district, among other reasons.

^bPending cases were not complete as of the end of fiscal year 2018. For example, many of the alien smuggling and illegal reentry cases filed in fiscal year 2018 were pending as of the end of that fiscal year.

Table 24: U.S. Border Patrol Apprehensions and Referrals for Prosecution in Texas Southern, Fiscal Years 2014-2018

Year	Single adult apprehensions	Single adults referred for criminal prosecution	Percent of single adults referred for criminal prosecution	Single adult referrals for prosecution declined by U.S. Attorney	Percent of single adult prosecution referrals declined
2014	204,947	23,125	11	165	1
2015	138,422	24,211	17	603	2
2016	142,827	21,228	15	695	3
2017	95,675	14,385	15	639	4
2018	116,058	41,110	35	4,104	10

Source: GAO analysis of U.S. Border Patrol data. | GAO-20-172

Note: For this report, single adults are those adults age 18 or older at the time of their apprehension who Border Patrol did not process as a member of a family unit. Border Patrol apprehensions include deportable and non-deportable single adults, as determined by Border Patrol; both are included in this table because, according to Border Patrol officials, non-deportable single adults, including U.S. citizens, may be apprehended and referred to the U.S. Attorney's Office for criminal prosecution.

Table 25: Single Adults U.S. Border Patrol Referred for Prosecution in Texas Southern, by Country of Nationality, Fiscal Years 2014-2018

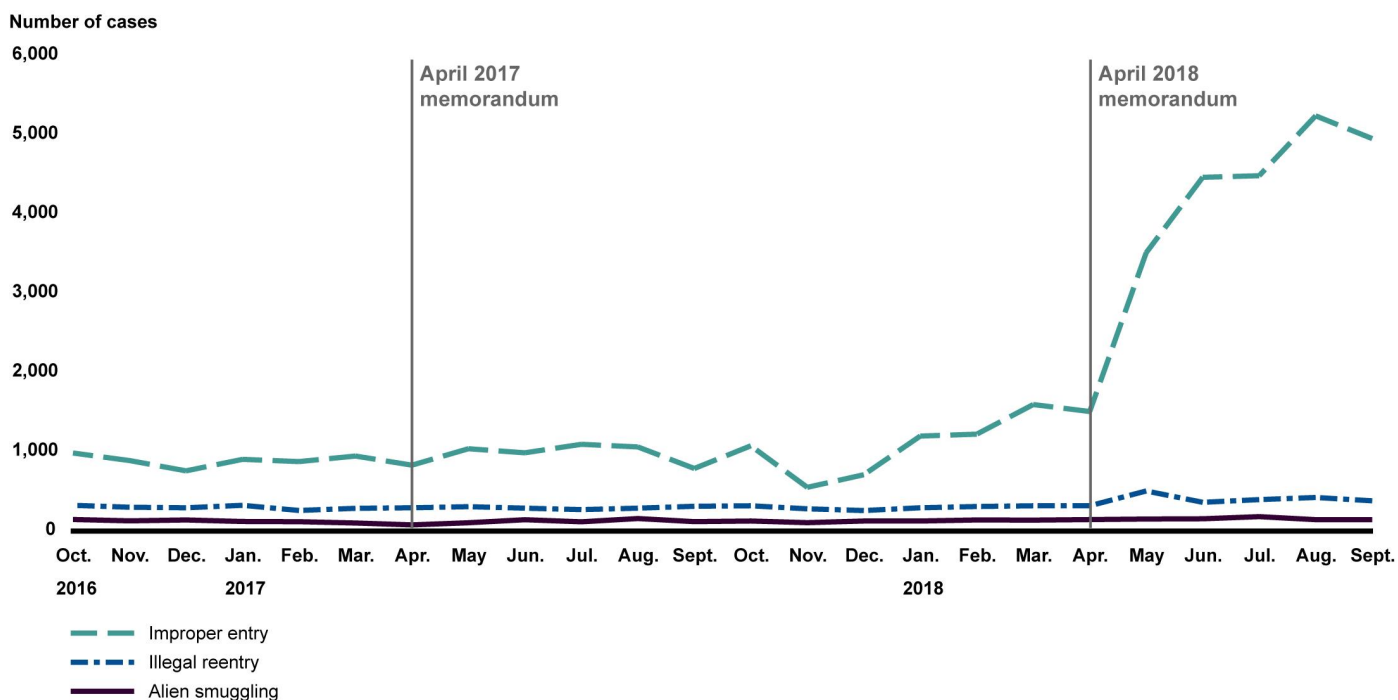
<i>Number of prosecution referrals</i>						
Year	Mexico	Guatemala	Honduras	El Salvador	United States	Other
2014	16,145	2,143	2,515	1,516	359	447
2015	18,046	2,002	1,593	1,344	586	640
2016	15,538	1,607	1,355	1,295	843	590
2017	10,393	1,151	1,055	874	717	195
2018	21,067	7,816	6,122	3,347	1,113	1,645

<i>Percent of those apprehended referred for prosecution</i>						
Year	Mexico	Guatemala	Honduras	El Salvador	United States	Other
2014	20	5	8	4	6	5
2015	26	9	11	6	10	9
2016	23	8	8	5	14	9
2017	24	7	9	6	15	5
2018	40	32	34	33	21	26

Source: GAO analysis of U.S. Border Patrol data. | GAO-20-172

Note: For this report, single adults are those adults age 18 or older at the time of their apprehension who Border Patrol did not process as a member of a family unit. Border Patrol apprehensions include deportable and non-deportable single adults, as determined by Border Patrol; both are included in this table because, according to Border Patrol officials, non-deportable single adults, including U.S. citizens, may be apprehended and referred to the U.S. Attorney's Office for criminal prosecution.

Figure 11: Cases Filed Monthly by Texas Southern U.S. Attorney's Office, by Lead Charge, Fiscal Years 2017-2018



Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

Data table for Figure 11: Cases Filed Monthly by Texas Southern U.S. Attorney's Office, by Lead Charge, Fiscal Years 2017-2018

Date	Alien smuggling	Improper entry	Illegal reentry
Oct-16	113	952	292
Nov-16	96	857	268
Dec-16	107	727	261
Jan-17	88	872	292
Feb-17	85	844	227
Mar-17	69	914	254
Apr-17	45	799	261
May-17	72	1006	275
Jun-17	110	955	256
Jul-17	84	1062	238
Aug-17	125	1029	256
Sep-17	86	757	280
Oct-17	94	1043	286

**Appendix II: Enclosures on U.S. Southwest
Border Districts**

Date	Alien smuggling	Improper entry	Illegal reentry
Nov-17	73	519	248
Dec-17	94	678	226
Jan-18	94	1166	261
Feb-18	107	1190	277
Mar-18	105	1564	286
Apr-18	112	1476	286
May-18	119	3480	473
Jun-18	122	4432	330
Jul-18	149	4452	364
Aug-18	111	5208	391
Sep-18	110	4921	349

Note: The memoranda referenced in this figure are: Department of Justice, Office of the Attorney General, Renewed Commitment to Criminal Immigration Enforcement, Memorandum for All Federal Prosecutors (Washington, D.C.: April 11, 2017) (April 2017 memorandum) and Department of Justice, Office of the Attorney General, Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a), Memorandum for Federal Prosecutors Along the Southwest Border (Washington, D.C.: April 6, 2018) (April 2018 memorandum). The lead charge is typically the most serious of the charged offenses at the time the U.S. Attorney's Office files the case, according to Executive Office for U.S. Attorneys officials.

U.S. Courts: Alpine, Austin, Del Rio, El Paso, Fort Hood, Midland / Odessa, Pecos, San Antonio, and Waco

Border Patrol Sectors: Big Bend, Del Rio, El Paso

Federal Circuit: Fifth

One-day improper entry prosecutions: Yes

Volume constraints: No

Improper entry (8 U.S.C. § 1325): Most immigration-related criminal cases in Texas Western are heard in Del Rio or El Paso. Del Rio was the first court to implement one-day improper entry prosecutions, known as Operation Streamline, in 2005, and continued these prosecutions through 2018. Nearly everyone apprehended is referred for prosecution. A Special Assistant U.S. Attorney detailed from U.S. Customs and Border Protection represents the government in court in Del Rio.

Illegal reentry (8 U.S.C. § 1326): Fast-track illegal reentry cases in Del Rio typically take between 4 and 6 months, according to court officials. An alien with one prior improper entry conviction will generally be charged with felony illegal reentry, according to USAO officials.

Alien smuggling (8 U.S.C. § 1324): Court officials in Del Rio attributed the increase in alien smuggling cases to a change in smuggler practices – from drug smuggling to human smuggling.

Note: These were generally Texas Western's prosecution practices as of November 2018.

District: Texas Western

Table 26: Cases Filed by Texas Western U.S. Attorney's Office, by Lead Charge, Fiscal Years 2014-2018

Year case filed	Alien smuggling	Improper entry	Illegal reentry
2014	413	13,709	3,719
2015	429	12,028	3,185
2016	537	14,572	3,260
2017	552	11,070	3,513
2018	714	15,117	5,923

Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

Table 27: Dispositions of Selected Immigration-related Cases Filed by Texas Western U.S. Attorney's Office, by Lead Charge, Fiscal Years 2014-2018, as of September 2018 (percent)

Year case filed	Alien smuggling				
	Guilty	Dismissed	Not guilty	Other ^a	Pending ^b
2014	87	6	0	3	4
2015	91	2	0	1	5
2016	95	3	0	0	2
2017	86	3	0	1	9
2018	27	1	0	2	69

Year case filed	Improper entry				
	Guilty	Dismissed	Not guilty	Other ^a	Pending ^b
2014	99	1	0	0	0
2015	99	1	0	0	0
2016	99	1	0	0	0
2017	99	1	0	0	0
2018	98	1	0	0	1

Year case filed	Illegal reentry				
	Guilty	Dismissed	Not guilty	Other ^a	Pending ^b
2014	99	1	0	0	0
2015	98	1	0	0	0
2016	98	1	0	0	1
2017	96	1	0	0	3
2018	52	2	0	0	46

Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

Note: Categories with 0 percent may not actually have zero occurrences due to rounding. Percentages may not add to 100 due to rounding.

^aOther dispositions include cases which ended because: the defendant was a juvenile, the charge was included in another case, the case was filed again, or the case was transferred to another district, among other reasons.

^bPending cases were not complete as of the end of fiscal year 2018. For example, many of the alien smuggling and illegal reentry cases filed in fiscal year 2018 were pending as of the end of that fiscal year

Table 28: U.S. Border Patrol Apprehensions and Referrals for Prosecution in Texas Western, Fiscal Years 2014-2018

Year	Single adult apprehensions	Single adults referred for criminal prosecution	Percent of single adults referred for criminal prosecution	Single adult referrals for prosecution declined by U.S. Attorney	Percent of single adult prosecution referrals declined
2014	27,467	17,588	64	0	0
2015	25,579	14,401	56	7	0
2016	29,680	18,612	63	3	0
2017	21,164	13,118	62	4	0
2018	26,499	19,823	75	0	0

Source: GAO analysis of U.S. Border Patrol data. | GAO-20-172

Note: For this report, single adults are those adults age 18 or older at the time of their apprehension who Border Patrol did not process as a member of a family unit. Border Patrol apprehensions include deportable and non-deportable single adults, as determined by Border Patrol; both are included in this table because, according to Border Patrol officials, non-deportable single adults, including U.S. citizens, may be apprehended and referred to the U.S. Attorney's Office for criminal prosecution. Due to rounding, categories with 0 percent may not actually have zero occurrences.

Table 29: Single Adults U.S. Border Patrol Referred for Prosecution in Texas Western, by Country of Nationality, Fiscal Years 2014-2018

<i>Number of prosecution referrals</i>						
Year	Mexico	Guatemala	Honduras	El Salvador	United States	Other
2014	11,128	1,303	3,147	1,449	123	438
2015	9,441	1,759	1,551	1,243	168	239
2016	12,199	2,029	2,263	1,435	244	442
2017	8,069	2,026	1,580	940	209	294
2018	10,395	3,973	3,359	1,140	203	753

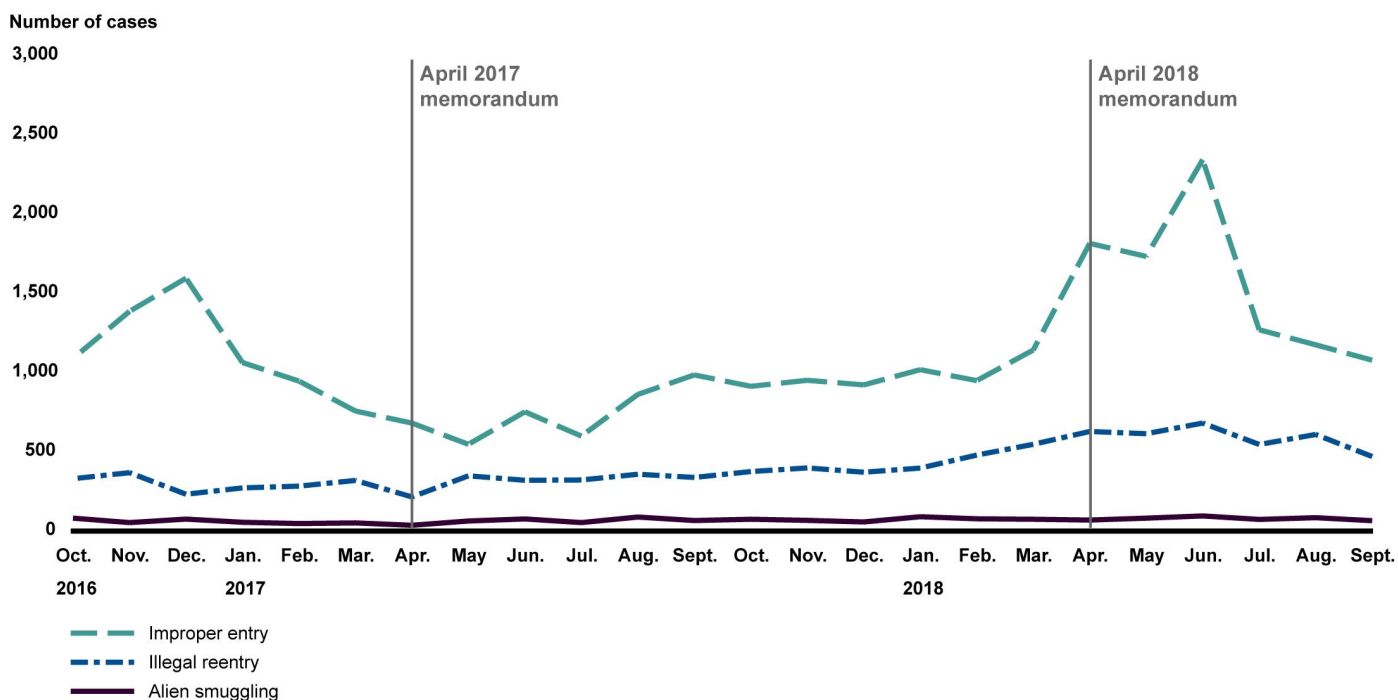
Percent of those apprehended referred for prosecution

Year	Mexico	Guatemala	Honduras	El Salvador	United States	Other
2014	73	71	78	78	3	60
2015	64	65	79	74	4	42
2016	71	73	80	77	6	51
2017	71	75	77	72	7	52
2018	80	85	85	85	8	75

Source: GAO analysis of U.S. Border Patrol data. | GAO-20-172

Note: For this report, single adults are those adults age 18 or older at the time of their apprehension who Border Patrol did not process as a member of a family unit. Border Patrol apprehensions include deportable and non-deportable single adults, as determined by Border Patrol; both are included in this table because, according to Border Patrol officials, non-deportable single adults, including U.S. citizens, may be apprehended and referred to the U.S. Attorney's Office for criminal prosecution.

Figure 12: Cases Filed Monthly by Texas Western U.S. Attorney's Office, by Lead Charge, Fiscal Years 2017-2018



Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

Data table for Figure 12: Cases Filed Monthly by Texas Western U.S. Attorney's Office, by Lead Charge, Fiscal Years 2017-2018

Date	Alien smuggling	Improper entry	Illegal reentry
Oct-16	65	1073	314
Nov-16	37	1370	352
Dec-16	59	1579	216
Jan-17	39	1047	256
Feb-17	31	930	267
Mar-17	35	741	303
Apr-17	20	665	199
May-17	47	531	332
Jun-17	60	736	304
Jul-17	37	583	306
Aug-17	72	846	342
Sep-17	50	969	322
Oct-17	58	897	359

**Appendix II: Enclosures on U.S. Southwest
Border Districts**

Date	Alien smuggling	Improper entry	Illegal reentry
Nov-17	51	935	382
Dec-17	41	906	355
Jan-18	74	1002	381
Feb-18	61	933	463
Mar-18	58	1126	531
Apr-18	53	1799	612
May-18	65	1717	598
Jun-18	79	2327	665
Jul-18	57	1254	530
Aug-18	68	1159	593
Sep-18	49	1062	454

Note: The memoranda referenced in this figure are: Department of Justice, Office of the Attorney General, Renewed Commitment to Criminal Immigration Enforcement, Memorandum for All Federal Prosecutors (Washington, D.C.: April 11, 2017) (April 2017 memorandum) and Department of Justice, Office of the Attorney General, Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a), Memorandum for Federal Prosecutors Along the Southwest Border (Washington, D.C.: April 6, 2018) (April 2018 memorandum). The lead charge is typically the most serious of the charged offenses at the time the U.S. Attorney's Office files the case, according to Executive Office for U.S. Attorneys officials.

Appendix III: Nationality of Defendants

This appendix provides additional detail on the nationality of defendants for improper entry, illegal reentry, and alien smuggling cases filed in U.S. southwest border federal judicial districts from fiscal years 2014 through 2018.¹ We analyzed the nationality of defendants in cases filed with a lead charge of 8 U.S.C. § 1325 (improper entry), 8 U.S.C. § 1326 (illegal reentry after removal, or illegal reentry), and 8 U.S.C. § 1324 (alien smuggling) from fiscal year 2014 through fiscal year 2018 and for fiscal year 2018.

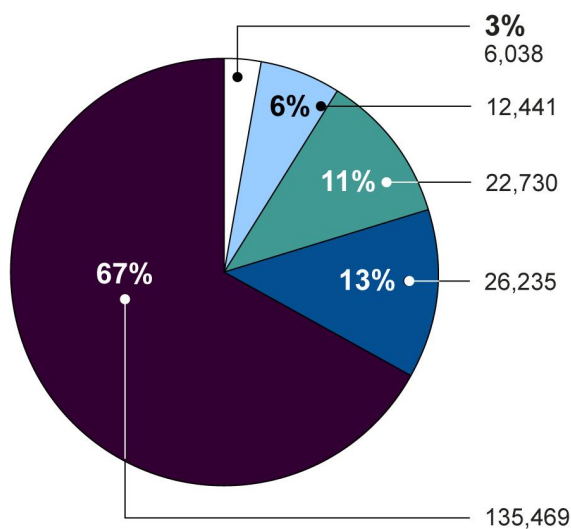
Our analysis of Executive Office for U.S. Attorneys (EOUSA) data indicates that the majority of defendants for cases filed with a lead charge of improper entry and illegal reentry from fiscal year 2014 through 2018 were Mexican nationals. The majority of defendants in cases filed with a lead charge of alien smuggling over this time period were U.S. nationals.

Improper entry (8 U.S.C. § 1325): From fiscal years 2014 through 2018, the majority of defendants in cases filed with a lead charge of improper entry were Mexican nationals. Our analysis of EOUSA data indicates that, in fiscal year 2018, the proportion of improper entry defendants who were Mexican nationals was lower than the fiscal year 2014 through 2018 time period, and the proportion of improper entry defendants who were Honduran or Guatemalan nationals was higher than the fiscal year 2014 through 2018 time period. The number of improper entry defendants who were Nicaraguan nationals increased substantially from fiscal year 2017 to 2018—from fewer than 70 defendants in fiscal year 2017 to more than 900 in fiscal year 2018. Figure 13 illustrates the nationalities of defendants with cases filed with a lead charge of improper entry, both from fiscal years 2014 through fiscal year 2018, and in fiscal year 2018.

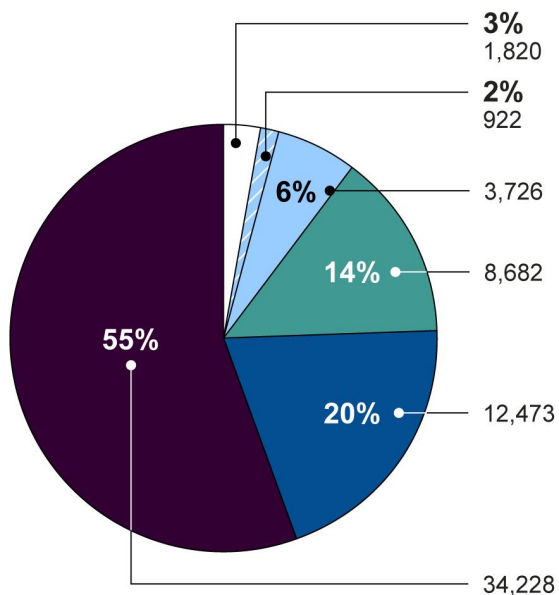
¹These districts include: Arizona, California Southern, New Mexico, Texas Southern, and Texas Western.

Figure 13: Nationality of Defendants for Cases Filed in U.S. Southwest Border Districts with a Lead Charge of Improper Entry, Fiscal Years 2014 through 2018

Fiscal year 2014 through fiscal year 2018



Fiscal year 2018



Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

Data table for Figure 13: Nationality of Defendants for Cases Filed in U.S. Southwest Border Districts with a Lead Charge of Improper Entry, Fiscal Years 2014 through 2018

Fiscal year 2014 through fiscal year 2018

Country	Percentage	Number
Mexico	67	135496
Guatemala	13	26235
Honduras	11	22730
El Salvador	6	12441
Other	3	6038

Fiscal year 2018

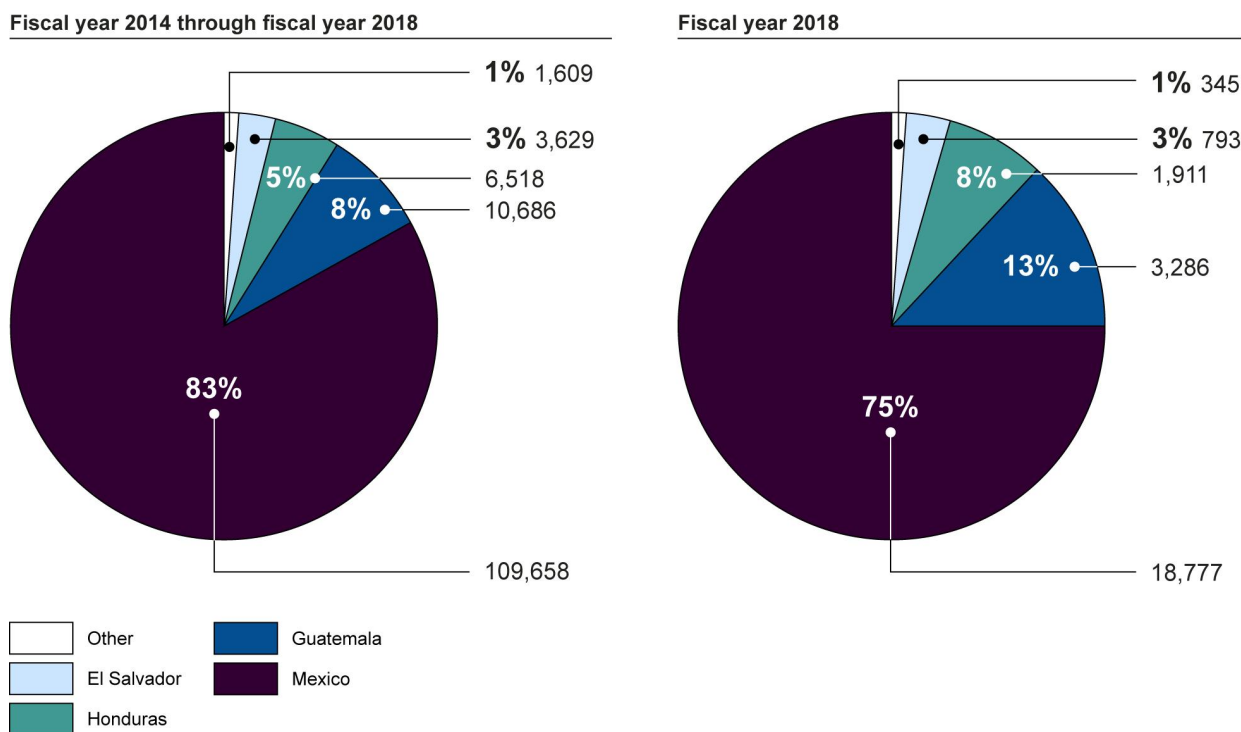
Country	Percentage	Number
Mexico	55	34228

Country	Percentage	Number
Guatemala	20	12473
Honduras	14	8682
El		
Salvador	6	3726
Nicaragua	2	922
Other	3	1820

Note: The 'Other' category for the chart that represents data from fiscal year 2014 through fiscal year 2018 includes nationals of Brazil, Nicaragua, Dominican Republic, and the United States, among other countries. The 'Other' category for the chart that represents data from fiscal year 2018 includes nationals of Brazil, Ecuador, Dominican Republic, and the United States, among other countries. The lead charge is typically the most serious of the charged offenses at the time the U.S. Attorney's Office files the case, according to Executive Office for U.S. Attorneys officials.

Illegal reentry (8 U.S.C. § 1326): The majority of defendants with cases filed with a lead charge of illegal reentry after removal from fiscal years 2014 through 2018 were Mexican nationals. Our analysis of EOUSA data indicates that, in fiscal year 2018, the proportion of illegal reentry defendants who were Mexican nationals was lower than in the fiscal year 2014 through 2018 time period, and the proportion of illegal reentry defendants who were Honduran or Guatemalan nationals was higher than in the fiscal year 2014 through 2018 time period. Figure 14 illustrates the nationalities of defendants with cases filed with a lead charge of illegal reentry, both from fiscal years 2014 through fiscal year 2018, and in fiscal year 2018.

Figure 14: Nationality of Defendants for Cases Filed in U.S. Southwest Border Districts with a Lead Charge of Illegal Reentry, Fiscal Years 2014 through 2018



Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

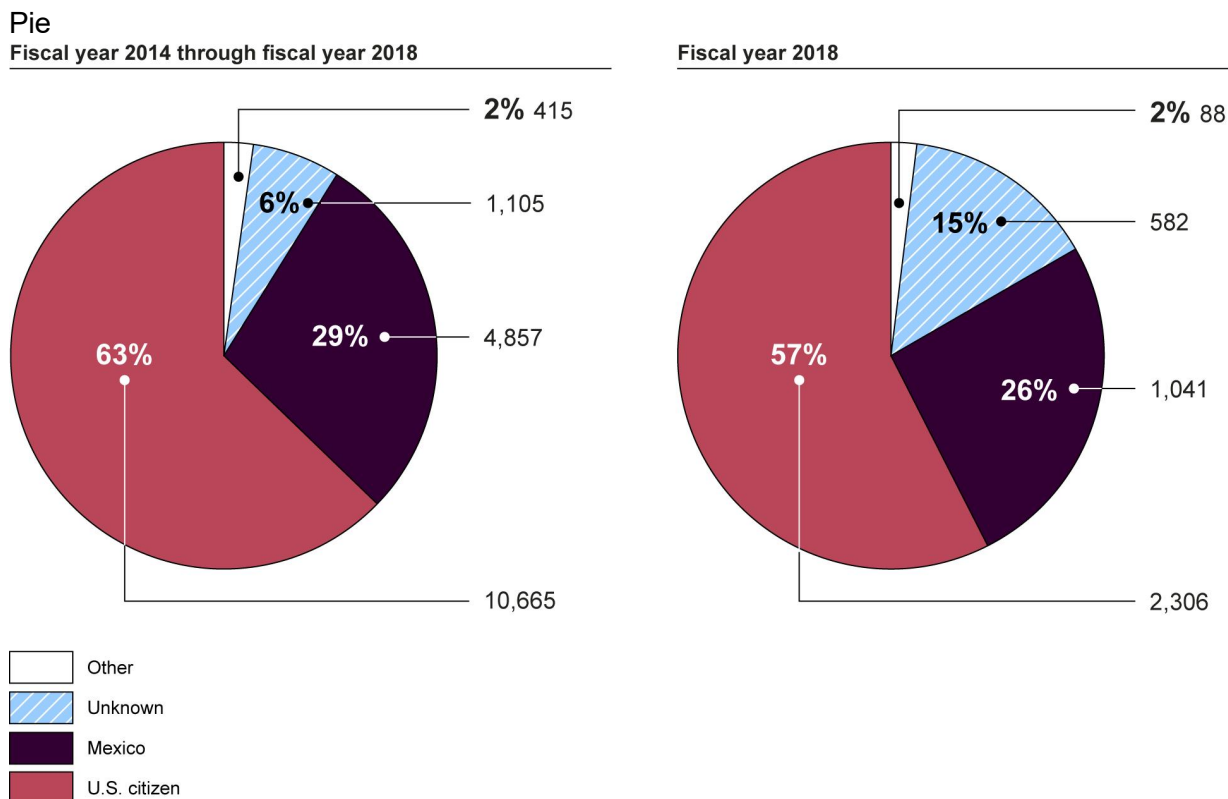
Data table for Figure 14: Nationality of Defendants for Cases Filed in U.S. Southwest Border Districts with a Lead Charge of Illegal Reentry, Fiscal Years 2014 through 2018

Country	Fiscal year 2014 through fiscal year 2018		Fiscal year 2018	
	Percentage	Number	Percentage	Number
Mexico	83	109658	75	18777
Guatemala	8	10686	13	3286
Honduras	5	6518	8	1911
El Salvador	3	3629	3	793
Other	1	1609	1	345

Note: the 'Other' category includes defendants from the Dominican Republic, Nicaragua, Ecuador, Brazil, among other countries. The lead charge is typically the most serious of the charged offenses at the time the U.S. Attorney's Office files the case, according to Executive Office for U.S. Attorneys officials.

Alien smuggling (8 U.S.C. § 1324): The majority of defendants in cases filed with a lead charge of alien smuggling from fiscal year 2014 through fiscal year 2018 were U.S. nationals. Our analysis of EOUSA data indicates that, in fiscal year 2018, the proportion of defendants for alien smuggling who were U.S. nationals was lower than in the fiscal year 2014 through 2018 time period. Figure 15 illustrates the nationalities of defendants with cases filed with a lead charge of alien smuggling, both from fiscal years 2014 through fiscal year 2018, and in fiscal year 2018.

Figure 15: Nationality of Defendants for Cases Filed in U.S. Southwest Border Districts with a Lead Charge of Alien Smuggling, Fiscal Years 2014 through 2018



Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

Data table for Figure 15: Nationality of Defendants for Cases Filed in U.S. Southwest Border Districts with a Lead Charge of Alien Smuggling, Fiscal Years 2014 through 2018

Country	Fiscal year 2014 through fiscal year 2018		Fiscal year 2018	
	Percentage	Number	Percentage	Number
U.S. Citizen	63	10665	57	2306
Mexico	29	4857	26	1041
Unknown	6	1105	15	582
Other	4	415	2	88

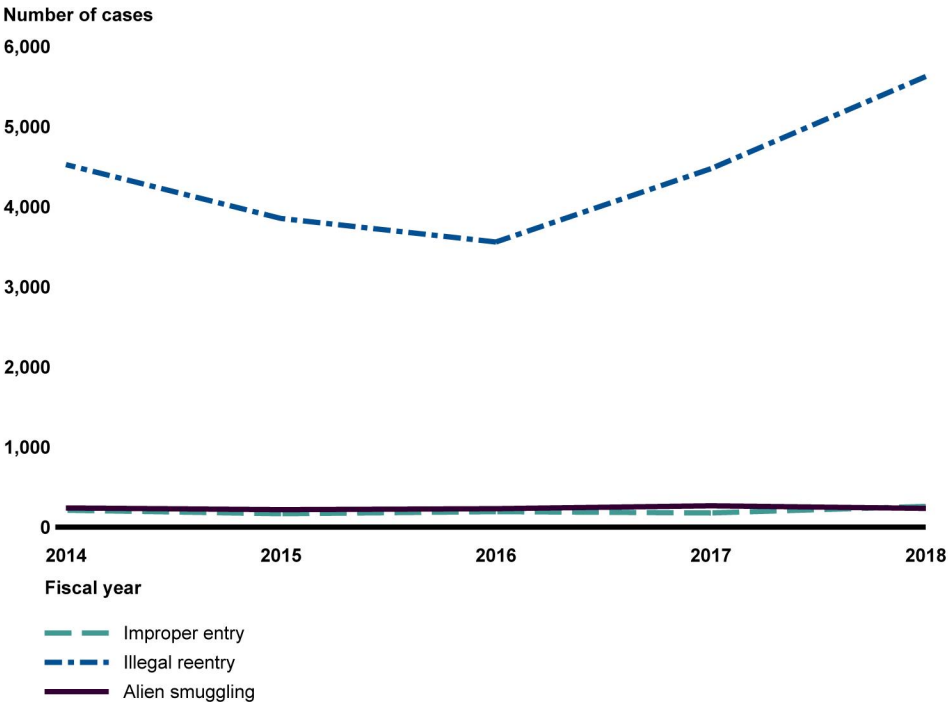
Note: The 'Other' category includes defendants from the Dominican Republic, Nicaragua, Ecuador, and Brazil, among other countries. The 'unknown' category reflects cases filed in which the U.S. Attorney's Offices were unable to determine the nationality of the defendant. The lead charge is typically the most serious of the charged offenses at the time the U.S. Attorney's Office files the case, according to Executive Office for U.S. Attorneys officials.

Appendix IV: Immigration-Related Prosecutions in Non-Southwest Border Districts

This appendix provides additional detail on cases filed in the 89 non-southwest border judicial districts with a lead charge of 8 U.S.C. § 1325 (improper entry), 8 U.S.C. § 1326 (illegal reentry after removal), or 8 U.S.C. § 1324 (alien smuggling) from fiscal year 2014 through fiscal year 2018. Specifically, this appendix analyzes the number of cases filed with one of these lead charges in every district but Arizona, California Southern, New Mexico, Texas Southern, and Texas Western. Our analysis of Executive Office for U.S. Attorneys (EOUSA) data indicates that illegal reentry cases comprised the majority of immigration-related offenses in non-southwest border districts.¹ From fiscal year 2014 through fiscal year 2018, about 14 percent of cases filed with a lead charge of illegal reentry were filed in non-southwest border districts. Figure 16 illustrates the number and trends in cases filed with a lead charge of improper entry, alien smuggling, or illegal reentry in non-southwest border districts from fiscal years 2014 through 2018.

¹EOUSA officials said that as a general rule, improper entry cases under 8 U.S.C. § 1325(a) must generally be filed in the district in which the conduct occurred. Because the statute (specifically offenses under 8 U.S.C. § 1325(a)) criminalizes illegally or improperly entering the United States, these cases could generally only be filed in districts along the border.

Figure 16: Cases Filed with a Lead Charge of Improper Entry, Illegal Reentry, or Alien Smuggling in U.S. Non-Southwest Border Districts, Fiscal Years 2014 through 2018



Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

Data table for Figure 16: Cases Filed with a Lead Charge of Improper Entry, Illegal Reentry, or Alien Smuggling in U.S. Non-Southwest Border Districts, Fiscal Years 2014 through 2018

Year	Alien Smuggling	Illegal Reentry	Improper Entry
2014	239	4525	211
2015	218	3853	167
2016	230	3559	193
2017	266	4474	177
2018	234	5625	259

Note: This figure excludes the following southwest border districts: Arizona, California Southern, New Mexico, Texas Southern, and Texas Western. The lead charge is typically the most serious of the charged offenses at the time the U.S. Attorney's Office files the case, according to Executive Office for U.S. Attorneys officials.

Our analysis of EOUSA data indicates that cases filed with a lead charge of illegal reentry in non-southwest border districts increased by approximately 26 percent between fiscal year 2017 and fiscal year 2018.

**Appendix IV: Immigration-Related
Prosecutions in Non-Southwest Border
Districts**

Illegal reentry cases comprised approximately 91 percent of immigration-related cases filed in non-southwest border districts from fiscal years 2014 through 2018. Table 30 illustrates the number of illegal reentry cases filed by non-southwest border district and fiscal year.²

Table 30: Cases Filed with a Lead Charge of Illegal Reentry in U.S. Non-Southwest Border Districts, Fiscal Years 2014 through 2018

District	2014	2015	2016	2017	2018	Percent change from fiscal year 2017 to 2018
Alaska	1	1	0	0	0	0
Alabama Middle	36	11	8	4	36	800
Alabama Northern	20	16	15	54	51	-6
Alabama Southern	8	15	9	16	28	75
Arkansas Eastern	17	19	3	20	57	185
Arkansas Western	39	21	17	17	24	41
California Central	194	143	90	123	226	84
California Eastern	112	86	24	31	58	87
California Northern	91	67	46	38	32	-16
Colorado	157	141	122	126	118	-6
Connecticut	5	1	4	9	12	33
District of Columbia	10	4	3	1	4	300
Delaware	8	4	12	10	21	110
Florida Middle	195	144	181	260	356	37
Florida Northern	5	11	16	19	43	126
Florida Southern	281	286	274	322	371	15
Georgia Middle	55	36	29	53	58	9
Georgia Northern	84	76	65	63	93	48
Georgia Southern	0	3	1	34	75	121
Guam	0	1	1	1	1	0
Hawaii	6	2	0	2	1	-50
Iowa Northern	78	43	63	57	45	-21
Iowa Southern	29	35	41	59	59	0
Idaho	63	50	56	65	97	49

²Table 30 includes districts that, according to CBP officials, are located near large ports of entry like airports or northern borders. These districts might have more prosecution referrals, according to officials.

**Appendix IV: Immigration-Related
Prosecutions in Non-Southwest Border
Districts**

District	2014	2015	2016	2017	2018	Percent change from fiscal year 2017 to 2018
Illinois Central	26	15	17	6	7	17
Illinois Northern	44	42	31	38	49	29
Illinois Southern	10	13	8	15	13	-13
Indiana Northern	4	4	5	5	13	160
Indiana Southern	18	12	18	14	21	50
Kansas	44	33	26	30	43	43
Kentucky Eastern	12	4	5	8	34	325
Kentucky Western	16	15	10	18	25	39
Louisiana Eastern	43	62	46	55	25	-55
Louisiana Middle	36	37	20	37	28	-24
Louisiana Western	8	13	8	24	33	38
Massachusetts	39	73	52	80	73	-9
Maryland	37	38	53	67	67	0
Maine	3	2	2	6	8	33
Michigan Eastern	109	88	85	124	175	41
Michigan Western	57	65	63	74	65	-12
Minnesota	21	18	27	16	18	13
Missouri Eastern	15	4	9	8	34	325
Missouri Western	16	31	4	14	28	100
Mississippi Northern	2	6	5	9	9	0
Mississippi Southern	29	4	5	24	55	129
Montana	4	10	3	9	18	100
North Carolina Eastern	29	27	39	107	92	-14
North Carolina Middle	47	31	29	42	33	-21
North Carolina Western	55	48	36	46	52	13
North Dakota	73	96	67	40	36	-10
Nebraska	144	118	62	110	127	15
New Hampshire	36	38	40	35	31	-11
New Jersey	27	18	16	21	49	133
Northern Mariana Islands	0	0	0	0	0	0
Nevada	96	69	81	101	106	5
New York Eastern	60	61	52	47	66	40
New York Northern	70	50	42	60	82	37
New York Southern	71	67	47	54	51	-6
New York Western	68	47	35	63	61	-3

**Appendix IV: Immigration-Related
Prosecutions in Non-Southwest Border
Districts**

District	2014	2015	2016	2017	2018	Percent change from fiscal year 2017 to 2018
Ohio Northern	20	9	12	34	98	188
Ohio Southern	74	67	63	59	51	-14
Oklahoma Eastern	1	0	0	0	0	0
Oklahoma Northern	53	29	22	24	26	8
Oklahoma Western	73	36	32	33	50	52
Oregon	126	109	112	99	105	6
Pennsylvania Eastern	57	47	46	78	66	-15
Pennsylvania Middle	47	33	25	64	116	81
Pennsylvania Western	22	16	17	11	24	118
Puerto Rico	80	63	167	131	141	8
Rhode Island	18	8	8	11	11	0
South Carolina	109	80	60	109	87	-20
South Dakota	28	29	35	34	40	18
Tennessee Eastern	31	28	10	24	91	279
Tennessee Middle	21	14	21	29	47	62
Tennessee Western	8	8	2	11	28	155
Texas Eastern	56	46	40	62	103	66
Texas Northern	214	196	203	253	259	2
Utah	225	270	255	324	216	-33
Virginia Eastern	167	124	86	70	190	171
Virginia Western	6	8	3	3	44	1367
Virgin Islands	4	2	2	2	8	300
Vermont	14	3	13	4	33	725
Washington Eastern	70	42	76	69	91	32
Washington Western	71	44	48	70	82	17
Wisconsin Eastern	6	7	1	7	13	86
Wisconsin Western	12	6	9	11	28	155
West Virginia Northern	6	7	13	11	16	45
West Virginia Southern	2	0	4	7	14	100
Wyoming	41	47	46	39	54	38
Total	4,525	3,853	3,559	4,474	5,625	26

Source: GAO analysis of Executive Office for U.S. Attorneys data. | GAO-20-172

Note: This table excludes the following U.S. southwest border districts: Arizona, California Southern, New Mexico, Texas Southern, and Texas Western. The lead charge is typically the most serious of the charged offenses at the time the U.S. Attorney's Office files the case, according to Executive Office for U.S. Attorneys officials.

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

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Staff Acknowledgments

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